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THE ECONOMIC ASPECTS
OF THE CROWSNEST PASS
RATES AGREEMENT

BY

THEODORE HERBERT HARRIS, M.A.

ONE OF THE
NATIONAL PROBLEMS
OF CANADA SERIES

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PREFACE

In the thesis that follows there is presented a discussion of one of the most important economic and political problems that the Dominion of Canada has had to face within recent years. In return for aid in the construction of the Crowsnest branch, the Canadian Pacific Railway agreed to the imposition of maximum rates on certain commodities both east and west bound. With the passage of years the continuation of these statutory rates brought about certain anomalous conditions which necessitated reconsideration of the original agreement.

On the one hand it was urged that the railway had signed the agreement voluntarily and had received value for the concessions granted. In addition it was felt that the west was being charged unduly high rates as compared with those prevailing in eastern territory and that to a limited extent the west was therefore justified in its fight against an attempt to increase fixed rates voluntarily granted. Moreover, these low fixed rates were of undoubtedly benefit to the western farmer whose economic position has been and is very unsatisfactory.

On the other hand the practice of adhering to fixed and unchangeable rates, particularly in a new and growing country, seems ridiculous. It forces competing railways to adopt these rates in competitive territory. It hampers the powers of the Railway Commission and it may prove unfair to other parts of the country.

These are a few of the questions which are considered by Mr. Harris in his essay on the Crowsnest Pass Rates. I think that anyone who reads what he has written will agree that it is a fair presentation of the facts and a logical presentation of conclusions. It may be that the rates imposed by the agreement are not unduly low. That is not the question. What is of real importance is the desirability or otherwise of imposing unalterable rates under changing conditions. As Mr. Harris himself has expressed it in other words, it is not only like fixing prices, but fixing them in perpetuity. In addition, is it desirable that the Railway Commission should have its power curtailed by the existence of rates over which it has no control? Mr. Harris thinks that it is not desirable and his reasons for coming to this conclusion seem to be sound.

J. C. HEMMEON.

McGill University,
Sept. 29, 1928.

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INTRODUCTION

The monograph which follows purports to investigate the economic aspects of the Crowsnest Pass Agreement, one of the many strands in the tangled web of Canadian freight-rate structure. The Crowsnest agreement, passed by Parliament in 1897, and invoked today as a Magna Carta by the grain-growing west, is important not only to the wheat-growing community who demand its perpetual retention, but also to the railways and shippers of other commodities who claim that its terms are working hardships upon them.

In setting out the history and present aspects of the agreement, the material has not been selected with a view to proving a previously formed conclusion. On the contrary, any fact that appeared to possess the qualifications of relevance and importance has been admitted into the discussion, and the conclusions offered have formed themselves naturally from full consideration of this data.

Our railway economy, particularly as regards the Crowsnest Pass Agreement, has been closely interwoven with the law. This is perhaps unfortunate, but it is necessary to face the facts as they actually exist, and hence a considerable portion of the discussion that follows deals with the legal questions of the case. It should be remembered, however, that the Board of Railway Commissioners is not a court of law in the ordinary sense; it is a court of economic equity as well, and its decisions, therefore, contain not only enunciations of legal formulae and percepts, but also lengthy investigations into the economic aspects of the cases presented for consideration.

To whatever extent it can be said that there has been a definite "policy" in Canada as regards freight rates generally and the Crowsnest Pass Act in particular, that policy can be ascertained only by a close examination of the judgments and orders of the Board of Railway Commissioners and it is for this reason that some of the judgments of the Board have been set out at considerable length here.

It has been found impossible to deal with the subject matter in strictly chronological sequence, due primarily to the fact that it has been thought best to divorce entirely the legal from the economic aspects of the issue. This is especially true of the later years, when the two, far from interlocking in any way, were diametrically opposed. Having this in mind, the plan of

procedure adopted consists of: first, an historic account of the Crowsnest Agreement, with particular reference to the legal aspect; second, a brief outline of general economic changes in Canada from 1897 to 1927; and finally, an investigation into the economic aspects of the agreement, with particular reference to the period between 1925 and the present day.

It has already been suggested that the conclusions were arrived at solely as a result of an investigation of the relevant facts, but in actually formulating and setting out these conclusions, it has been found necessary to couple a number of economic hypotheses with the facts. Aside from their foundation upon the practical aspects, the conclusions rest upon the theory that freight rates are based on "what the traffic will bear" and not upon cost, and that it is unsound economy to attempt to benefit one part of the country at the expense of another or to foster one industry to the detriment of a second.

THE ECONOMIC ASPECTS OF THE CROWSNEST PASS RATES AGREEMENT

CHAPTER I

THE CONSTRUCTION OF THE CROWSNEST PASS RAILWAY AND THE TERMS OF THE CROWSNEST AGREEMENT

Reasons for the Construction of the Crowsnest Pass Railway—Parliamentary Debates on the Terms of the Crowsnest Act—The Terms of the Crowsnest Act and their Purport

Reasons for the Construction of the Crowsnest Pass Railway

The idea of constructing a railway line through the Crowsnest Pass, from Lethbridge, in what is now the Province of Alberta, to Nelson, B.C., was first promoted with vigour in 1896 by the late Honourable A. G. Blair. A considerable amount of comment had previously been published in the press concerning the feasibility of this line and the advantages to be gained from its construction, but it was not until after Mr. Blair was sworn in as Minister of Railways in the first Laurier government that any really serious consideration was given the project.

Shortly after assuming office, Mr. Blair made a trip to the Pacific Coast and adjacent territory to study the railway situation. At that time but one line of railway connected what were known as the Northwest Territories with Vancouver, on the Pacific Coast. The only link between Calgary and the western boundary of Canada was the main line of the Canadian Pacific Railway running through the Kicking Horse Pass.

At the same time, attention was being directed to the rapid forward strides that were being made in the mining areas of British Columbia, where production was showing annual increases of considerable volume. A comparative statement of the value of gold, silver, lead and copper produced in British Columbia over a period of seven years shows a net gain in 1896 of about 176 per cent. over 1890¹.

The rapidly growing mining industry of British Columbia and the even greater outlook for the future were without doubt the primary reasons for the construction of the Crowsnest Pass Railway. The rate-reductions on specific articles which later became a bone of contention, seemed, at that time, almost incidental to the general plan of procedure.

The principal authority regarding the future of British Columbia as a great mineral producing area was Mr. W. A. Carlyle, mineralogist of the province. After a considerable time spent in exploration and research, Mr. Carlyle wrote a long and detailed account of the mineral wealth of British Columbia. In part Mr. Carlyle said:

"The production of the Kootenay mines, when compared with that of many of the mining centres in other countries, will not appear so very large to a casual reader; but when all the conditions are understood, that an entirely new country of large territorial extent is being rapidly opened up under difficulties, that the supply of needed capital, until recently has been meagre, and that in reality, not a single mine has had sufficient time to do sufficient development work to put it on a really proper basis for the extraction of ore and further exploratory work, this production will then be seen to indicate a most flourishing and hopeful condition of affairs."

It was also pointed out at that time that the important business of smelting, coincident with that of mining, would in all probability be transferred to the United States unless transportation facilities were provided for the importation of necessary supplies and the export of the finished products.

On June 11, 1897, a bill to authorize a subsidy for a railway through the Crowsnest Pass¹ was presented in Commons for the first reading.

The bill¹ provided as follows:

Clauses (a) and (b) are covenants for the construction and operation of the Crowsnest Railway.

By clause (c) all local tolls on the new railway itself and certain connecting lines and other lines in Southern British Columbia and all tolls on traffic on the entire Canadian Pacific Railway system originating from or destined for any point on the new railway or on such connecting lines and lines in British Columbia were made subject to revision and control by the Governor-in-Council, or by a Railway Commission when established.

By clauses (d) and (e) maximum rates for certain commodities moving in stated directions and between designated points were provided and it was covenanted that no higher rates shall be charged for such traffic after the dates specified. There is no reservation of any power of revision or control in regard to these maxima.

By clause (f) the granting of running powers was reserved to the Railway Committee of the Privy Council.

By clause (g) the new line and the specified connecting lines in British Columbia and the line between Dunmore and

Lethbridge were made subject without restriction to the operation of the general Railway Act.

By clause (h) the disposition of any provincial land subsidy was made subject to regulation by the Governor-in-Council.

By clause (i) the company was required to surrender to the Dominion Government 50 per cent. of any coal-bearing lands it may obtain from the Government of British Columbia to be dealt with on conditions to be prescribed by the Governor-in-Council.

Parliamentary Debates on the Terms of the Crowsnest Act

The discussion of the bill in parliament fell into three principal divisions; first, the advantages to be derived from the construction of the line; second, the terms under which the line was to be constructed, more particularly with reference to the subsidy which the Canadian Pacific Railway Company was to receive; and third, the feasibility of constructing the line as a government enterprise. Regarding the first, there was practically unanimous approval, the sole dissenting voice being that of a member for an Ontario constituency who failed to see why so large a sum was being devoted to the development of British Columbia, while the province of Ontario, was, in his opinion, being neglected.

It was that section of the bill that dealt with the subsidies which the Canadian Pacific Railway Company was to receive that promoted the greater part of the discussion, leaving little time for the House to hear the pros and cons of the argument that the government undertake the work on its own behalf. The principal opposition to the idea of constructing the Crowsnest Pass Railway as a government line came from Sir Charles Tupper⁴ who maintained that the government could not construct any line of railway as economically as a private company. In support of his contention, he pointed out that considerable pressure is always brought to bear regarding the acceptance of tenders and the giving of positions resulting from government ownership.

Opposition to the subsidy granted the Canadian Pacific Railway Company under the terms of the bill came from many sources, but particularly from Mr. Ross-Robertson⁵. This member pointed out that as the total cost of constructing the 330 miles of railway was estimated at \$7,000,000, and that as the government was subsidising it to the extent of \$11,000 a mile, the company was only required to find forty per cent. of the funds necessary for the construction of a line which he believed would be a commercially successful enterprise from the very start. He deplored the fact that the public resources of British Columbia

were being transferred to the Canadian Pacific Railway Company to the extent of 20,000 acres of land per mile, and felt also, that when the line was in operation, the people would be wholly at the mercy of the Canadian Pacific Railway.

Some further misgivings were entertained due to the fact that there had been guaranteed to the British Columbia and Southern Railway, a company incorporated under the laws of British Columbia, a land grant of 20,000 acres per mile in the event of that company constructing a railway line through the Crowsnest Pass. By the terms of an agreement between the Canadian Pacific Railway Company and the British Columbia and Southern Railway, the former fell heir to a portion of this grant. The fact was made clear, however, that a considerable portion of the land which the Canadian Pacific was to obtain by virtue of its agreement with the British Columbia and Southern would be turned over to the Dominion Government⁶.

Further debate on the subject was restricted to the usual parliamentary tactics of delay.

The Terms of the Crowsnest Act and Their Purport

The Canadian Pacific Railway Company's westbound *all rail* rates, from points on its lines east of Fort William in effect prior to, and at the time of assent to the Crowsnest Pass Act were published by the company in proportionate tariffs dated from July 1892 to April 1895⁷. Pursuant to the terms of the Act, the company issued further tariffs, effective as of January 1, 1898⁸. These tariffs applied to westbound traffic originating on the company's owned, leased, and operated lines east of Fort William, to territory similarly described west of that point.

Three reductions in rates were granted under the terms of the Crowsnest Act; the first, of 33 1-3 per cent. on fresh fruits; the second, of 20 per cent. on coal oil; and the third, of 10 per cent. on numerous articles coming under the general captions of hardware and machinery. The reduction in grain rates formed a different article of the act⁹.

The commodities enumerated in the act were, in 1897, all produced and shipped from eastern points and represented such articles as were necessary for the development of the west. The reduction of 33 1-3 per cent. on the fresh fruits brought the rates for those products down to 83 1-3 cents per hundred pounds in carloads from Toronto points to Winnipeg; to Edmonton, from the same points the rate was \$1.88½. Between Fort William and Winnipeg the rate on fruit was 53½ cents per hundred pounds. Coal oil, under the agreement was 65½ cents a hundred pounds (C.L.) from Toronto points to Winnipeg, 70½ cents from Montreal points to Winnipeg, and 45½ cents

from Fort William to the same destination. These figures represent a reduction of 20 per cent. on those formerly used.

The rates on agricultural implements, in carload lots, upon which the reduction was 10 per cent. were: 68½ cents per hundred pounds Toronto points to Winnipeg, 74 cents Montreal points to Winnipeg; 42½ cents Fort William to Winnipeg, with proportionate increases to points farther west. The rates on the remainder of the articles coming under this class ranged from 74 cents per hundred pounds, Toronto points to Winnipeg, 79½ cents, Montreal points to Winnipeg, to \$1.66½ Toronto points to Edmonton. On household furniture, however, the rates were slightly higher.

When the small incomes of western Canadian farmers of the late nineteenth century and the extreme difficulties under which they worked are considered, it will be seen that the rate-reductions were of considerable assistance to them, and provided no little impetus to the agricultural industry generally. The amount of wheat shipped from points west of Port Arthur increased in round numbers from 15,500,000 bushels in 1891 to 24,000,000 bushels in 1896¹⁰.

The eastbound grain and flour rates to Fort William and Port Arthur from points west thereof, described by the Act, were specific reductions in cents per hundred pounds (C.L.) but the description of the territory from which these reductions were to be applied differs in language from that used to define the territory affecting the other commodities for which reduced rates had been contracted¹¹. Reductions in grain and flour were to be applied from all points on the Company's main line, branches and connections, west of Fort William¹², while the reductions applicable to westbound traffic were to be effective from Fort William and all points on the Company's line east of Fort William to all points west of Fort William on the Company's main line or on any line of railway throughout Canada, owned or leased, or operated on account of the Company.

The phrase "east of Fort William" is apparently open to one interpretation only. The specified reductions were seemingly meant to apply from points on the company's line only, but to destinations west, these restrictions did not govern. The reduced rates, further, were to be applied not only to the Company's main line, but to any lines owned, leased, or operated by it.

A brief outline of rate conditions prior to the passage of the Crowsnest Act is necessary to the full understanding of the immediate effect on the Canadian Pacific Railway Company of the new rates.

Prior to the Crowsnest Act, the western peninsula of Ontario had lower rates to the Canadian West owing to the route by

American lines via Chicago and St. Paul. The Grand Trunk Railway had its established route to Chicago, and thence westward via its American connections to St. Paul, while the American railway lines connected that city with Winnipeg, Portage la Prairie, Brandon, and other intermediate points. The mileage via Chicago was, therefore, less than via the North Bay route¹⁵. Under these circumstances, the Canadian Pacific Railway Company was obliged to adopt the rates via the shorter mileage of its southern route competitors.

When the Canadian Pacific Railway was incorporated and its charter granted in 1881¹⁶, the Consolidated Railway Act of 1879¹⁷ was in force.

This Act conferred, with suitable protection against the possibilities of discrimination, the power to fix tolls upon the railway company or its directors¹⁸. The Railway Committee of the Privy Council enjoyed the right to approve the company's tariffs before they became effective, but if they established a tariff which would return the Canadian Pacific Railway less than 15 per cent.¹⁹ per annum profit on the capital actually expended in the construction of the railway, such lower tariff could not go into effect save with the consent of the Company²⁰.

It was provided in the Crowsnest Pass Agreement²¹, with respect to rates between the points mentioned in that agreement that they were to be approved first by the Governor-in-Council, or "by a railway commission, if and when such a commission is established by law," and also that such rates "shall at all times thereafter and from time to time be subject to revision and control in the manner aforesaid". A subsequent section of the Act fixes the rates of reduction to be made on the mentioned commodities and states further that "no higher rates than such reduced rates or tolls shall hereafter be charged by the Company upon any such merchandise carried by the Company between the points aforesaid".

The year 1899 was the first to reflect, to any extent, the effect of the Crowsnest rate scale.

¹ Production of these metals from 1890 to 1896 :

1890—\$2,600,000	1892—\$3,588,000	1895—\$5,655,000
1891—\$3,500,000	1893—\$9,588,000	1896—\$7,146,000
	1894—\$4,225,000	

² Assented to June 29, 1897. 60 & 61 Victoria, c. 5.

³ *Vide Appendix.*

⁴ *Hans.*, 1897, Vol. II, 4532 *et seq.*

⁵ *Ibid.*, 4543 *et seq.*

⁶ *Ibid.*, 4526 ; Mr. Blair.

⁷ Tariffs, F.T. 29 and 30, 38, 46 and Tariff 208.

⁸ Tariffs, F.T. 53, 54 and 56 and Special Commodity Tariff 457.

⁹ Section (e) *q.v.*

¹⁰ Mr. Pourpore, *Hans.*, 1897, Vol. II, 4597.

¹¹ Crowsnest Act, Sec. 1, paras. (d) and (e).

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¹³ Ibid.¹⁴ The mileage compared : (Canadian Pacific Railway Co.'s figures).

FROM	WINNIPEG		PORTAGE LA PRAIRIE		BRANDON	
	Via G.T.R. Chicago & connec- tions	Via G.T.R. North Bay and C.P.R.	Via G.T.R. Chicago & connec- tions	Via G.T.R. North Bay and C.P.R.	Via G.T.R. Chicago & connec- tions	Via G.T.R. North Bay and C.P.R.
	Miles	Miles	Miles	Miles	Miles	Miles
Windsor, Ont.	1210	1477	1252	1532	1307	1610
Chatham, "	1256	1432	1298	1487	1358	1565
Woodstock, "	1313	1351	1268	1406	1410	1484
Hamilton, "	1360	1308	1402	1363	1457	1441
Toronto, "	1395	1279	1437	1334	1492	1412

¹⁴ 44 Victoria, c. 1.¹⁵ 42 Victoria, c. 9.¹⁶ Sec. 17.¹⁷ This amount was subsequently reduced to 10 per cent.¹⁸ Sub-sec. 11.¹⁹ Vide Appendix.

CHAPTER II

THE CROWSNEST PASS ACT, 1897-1917

The Manitoba Agreement—Formation of the Board of Railway Commissioners
—The Coast Cities Case—Complaint of the Regina Board of Trade—
Western Rates Case—Eastern Rates Case and Conditions in 1917

The Manitoba Agreement

The freight rates established by the Crowsnest Pass Act in 1897 remained undisturbed until 1901, in which year the Government of the Province of Manitoba arranged for the construction of certain railway lines within its boundaries. The only detail of those arrangements that is of any importance to this discussion is that section dealing with freight rates. The arrangement¹ provided that in exchange for certain guarantees and other considerations, the Canadian Northern Railway's freight rates were to be fixed by the Lieutenant-Governor-in-Council. The section of the act which brought the Canadian Northern Railway of Manitoba into existence that deals specifically with this matter reads as follows²:

“In consideration of the guarantee of said bonds and
“the assignment of said lease and option, the company
“hereby agrees that up to the 30th day of June, A.D. 1930,
“the Lieutenant-Governor-in-Council shall from time to
“time fix the rates to be charged or demanded by the com-
“pany for the carriage of all freight from all points on the
“Company's lines in Manitoba to Port Arthur, and from
“Port Arthur to all points on the Company's lines in
“Manitoba, and from all points on the Company's lines in
“Manitoba to all other points on said lines in Manitoba.
“Provided always that before any rates are so fixed, the
“Company shall be heard and their interests taken into
“consideration. The Company agrees that it will not at
“any time after the said rates have been so fixed charge or
“demand for the carriage of freight between the points
“aforesaid greater rates than those so fixed by the Lieu-
“tenant-Governor-in-Council.”

As a result of the Crowsnest Act, the 17-cent rate on grain from Winnipeg to Fort William, was reduced on September 1, 1899 to fourteen cents, corresponding reductions being made from other points.

The next reduction in rates which the Canadian Pacific Railway Company adopted was the result of the agreement entered into between the Government of Manitoba and the Canadian Northern Railway. As the outcome of that agreement the 14-cent grain rate from Winnipeg to Port Arthur was reduced to ten cents and reductions averaging 15 per cent. of the tariff rates on other freight were made. Although the operations of the Canadian Northern Railway at that time were not very extensive, the Canadian Pacific Railway Company, for competitive reasons, was forced to adopt the scale of rates that the Canadian Northern had contracted for with the Government of Manitoba¹.

If the Canadian Pacific Tariff in force prior to the Manitoba Agreement be represented by 100, the Canadian Northern Railway's rates, according to the agreement were 85, and the Canadian Pacific to meet competition brought its own rates to the same level. Following this action, the Canadian Pacific Railway Company reduced its rates in Saskatchewan and Alberta to 92½. These reductions seem to have been brought about voluntarily and neither by agreement nor competition.

The point has been advanced that the Canadian Pacific Railway Company, not being a party to the Manitoba Agreement was not legally bound to make the reductions in favour of Manitoba that it did². This statement is without doubt true, but seems to leave the impression that the terms of the Manitoba agreement discriminated against the Canadian Pacific Railway Company and rates that it had previously established by virtue of an agreement with the Dominion Government. Such a conclusion is unwarranted, however, since the Crowsnest Act provided no guarantee against a contingency such as this, and since a railway not enjoying a monopoly must be prepared to meet competition from time to time.

Formation of the Board of Railway Commissioners

Prior to 1903, the Railway Committee of the Privy Council was the official board of arbitration before which complaints and other questions affecting Canadian railways were brought. This committee, however, was a political body composed for the most part of men inexperienced in railway economics and as a result, commanded little public confidence.

During the year 1902 considerable pressure was brought to bear upon the Government from many important directions, and on August 24, 1903, the Board of Railway Commissioners came into existence³. Specific powers were conferred upon the Board by the Act which created it, many having been added since that time.

What is of particular concern here is an understanding of the powers conferred upon the Board that afterwards bore particularly upon the litigation in connection with the Crowsnest Pass Act.

The passing of the Railway Act in 1903 saw the first sweeping change in the matter of control of Dominion railways, this board being endowed with very wide powers⁶. The opinion has also been expressed that for the purpose of exercising their jurisdiction they form a court of record, and as such, have all the powers of a superior court.

The terms of the Railway Act expressly define the jurisdiction of the Board which it created, the powers which the Board may exercise being set forth in section 23⁷. According to the Supreme Court of Canada, unless "it can be shown that the Board has no jurisdiction, its powers as a body created by Statute of Canada are unlimited in character". It has also been held that any intention to exempt from the jurisdiction thus conferred, any subject otherwise included in it, must be shown in definite terms of the Act itself.

Section 3 of the Act⁸ makes its application general and comprehensive. The following section⁹ provides that any section of the Act may by any Special Act passed by the Parliament of Canada, be excepted from incorporation therewith, or may be extended, limited or qualified.

The Railway Act of 1888 which was in force at the time of the passage of the Crowsnest Act did not contain this provision, but section 3 of the Act of 1888 provides :

"3. This Act, subject to any express provisions of the Special Act and to the exception hereinafter mentioned, applies to all persons, companies and railways within the legislative authority of the Parliament of Canada, except Government railways."

The corresponding section of the 1903 Act does not contain this qualification, and the exception as to the Special Act is to be found in Section 6¹⁰. Section 5¹¹ of the 1903 Act is a combination of Sections 5 and 6 of the Act of 1888. Section 6 of the Act of 1888 reads :

"6. If in any Special Act it is provided that any provisions of any general Railway Act in force at the time of the passing of the Special Act is excepted from incorporation therewith, or if the application of any such provision is extended, limited or qualified, the corresponding provision of this Act shall be extended, limited, or qualified in like manner."

Whereas this section refers to and includes "any Special Act," section 5, of the Act of 1903, speaks of "any Special Act heretofore passed by Parliament."¹²

The connection between the Railway Act and the Special Act has been emphasized here due to the fact that a considerable amount of litigation later centred around the question of whether or not the Crowsnest Act was a Special Act, and as such demanding different consideration.

The Coast Cities Complaint

The first complaint of any importance regarding western freight rates and the Crowsnest Act is commonly known as the Coast Cities Case¹³ and was filed on May 25, 1907. The complainants, the Boards of Trade of British Columbia Coast Cities, alleged that the rates levied upon all classes of goods from Vancouver to the interior points of British Columbia and the Northwest Territories as far east as Calgary on the main line and to MacLeod on the Crowsnest Line were discriminatory against them, as compared with the westbound traffic from Winnipeg to the same territory.

At that time the Winnipeg rates westbound for distribution of merchandise were based upon the balance of through rates to prairie destinations from Fort William, plus a terminal charge at Winnipeg. The Crowsnest rates did not apply to Winnipeg, but as a result of this particular system of rate-basing, the City of Winnipeg benefitted by the balance of the Crowsnest rate from Fort William.

The majority judgment in this case was that except in so far as it relates to the classes of traffic mentioned in the Crowsnest Act, the complaint be dismissed¹⁴. It was held that when the Crowsnest Act was passed and the railway agreed in exchange for a subsidy to charge lower tolls upon certain classes of goods from Fort William and all points east to all points west, the Railway Act of 1888 prohibited all unjust discrimination between localities, and that parliament would not have authorized what otherwise would be considered unjust tolls¹⁵.

Dealing with the situation as it then stood, Chief Commissioner Killam pointed out that most of the traffic carried westward from Winnipeg was carried under what were known as *Traders' Tariffs*, marked as "to be used only on re-shipment by Winnipeg wholesale houses only to traders doing business at or tributary to stations specified" in the tariffs and that the contest centred around the extent to which these tariffs were to be applied.

The same Commissioner also made reference to what he described as two minor points of the case. After reciting the provision of the Crowsnest Pass Act dealing in general terms with rate-reductions the Chief Commissioner said :

"As a result of this Act and the agreement made under "it, the company made tariffs of reduced rates upon the

"classes of merchandise referred to, not only from Fort William and points east thereof westward, but also from Winnipeg westward, without similarly reducing rates on "the same classes of merchandise from Pacific points eastward. These reductions cannot be considered as having been forced upon the company, but were the results of an agreement which it chose to enter into for the purpose of obtaining a subsidy in aid of the construction of a line of railway. The agreement and the statute did not even deal with rates from Winnipeg at all . . . I think we are justified in inferring that, in respect of the classes of merchandise to which these tariffs relate, the reductions did result in discrimination, and that the rates from Vancouver eastward, upon similar traffic carried under similar circumstances, should be proportionately reduced."

The outcome of the Coast Cities Case was to cause reduced rates to be put into effect from the Pacific Coast to Winnipeg, but only with respect to the commodities enumerated in the Crowsnest Act.

In the same year, a case of lesser bearing was lodged by the Portage la Prairie Board of Trade against the so-called *Traders' Tariffs* to which reference has been made above. In this case the Chief Commissioner decided that the rates based as outlined were illegally discriminatory, and new tariffs were accordingly filed.

The Regina Board of Trade Complaint

The record is now brought down to the complaint of the Regina Board of Trade, heard at Regina, November 8, 1909. The Regina Board of Trade applied under sections 314 and 349 of the Railway Act¹⁵ for a reduction in tolls in classes 1 to 10 inclusive, from the head of the lakes to Regina, alleging that there was unjust discrimination against Regina in favour of Winnipeg and other points in Manitoba.

At that time, the Canadian Pacific and the Canadian Northern were the only railway companies operating between Fort William, Port Arthur and Regina, and though the mileage between the points mentioned was slightly longer in the case of the latter railway, the rates were similar.

The rates between Fort William and Winnipeg (419 miles) and between Fort William and Regina (777 miles) compared :

Fort William to Winnipeg	1	2	3	4	5	6	7	8	10
Rates, excluding Winnipeg cartage	86	72	57	42	38	34	25	24	20
Rate per ton mile	4.11	3.44	2.72	2.00	1.81	1.62	1.19	1.15	0.95

Fort William to Regina	1	2	3	4	5	6	7	8	10
Rates	176	147	117	87	73	67	49	38	38
Per ton mile.	4.58	3.77	3.01	2.24	1.88	1.72	1.26	.98	.98 ¹⁷

The Railway Companies contended that the circumstances of the one case differed from those of the other and that they were therefore justified in charging a higher rate per ton mile to Regina than to Winnipeg. They pointed out that Regina was not entitled to the benefit of the lower tolls effective to Manitoba points in accordance with the terms of the Manitoba Agreement. It was the further contention of the railway companies that the greater density of traffic to Manitoba points warranted the charging of lower rates to those destinations. The City of Winnipeg as an interested party, supporting the contentions of the Railway Companies, added the opinion that that city, as a wholesale distributing centre had vested rights to a lower scale of rates, which should not be interfered with by giving rates on an equal basis to Regina.

The respondent companies claimed also that the reduced rates to Manitoba were brought about by three specific agreements with the Government. The first of these was made between the Northern Pacific Railway and the Province of Manitoba in 1888, the second, the Crowsnest Pass Agreement, and the third, the Manitoba Agreement of 1901. The Canadian Pacific Railway Company, while not involved directly in either of the Manitoba Agreements, and not legally bound by them, was forced, nevertheless, to lower its rates in each case for competitive reasons.

The Canadian Northern Railway Company later¹⁸ obtained authority from Parliament to extend its lines beyond Manitoba and therefore placed itself in a somewhat similar position to that which the Canadian Pacific Railway Company occupied when it negotiated the Crowsnest Pass Agreement.

The opinion was expressed¹⁹ that in passing Sec. 315 of the Railway Act, Parliament could not have had the intention of permitting railway companies to create different circumstances and conditions by entering into a contract with someone and defeating the purpose of the section. In disposing of the contention that a greater density of traffic to Manitoba points than to those in Alberta warranted the charging of a lower ton-mile rate to Winnipeg, the Board maintained that traffic density had not previously been an element of rate-making, and could not, therefore, be introduced in this case.

The statement, obviously illogical in the face of circumstances under which it was presented, that Winnipeg was the

natural wholesale distributing centre of the west was refuted by the Assistant Chief Commissioner, Mr. Scott, who pointed out that if Winnipeg did enjoy the position it claimed, that position was brought about artificially, as a direct result of rates which discriminated in favour of Winnipeg to the detriment of Regina.

Though the city of Winnipeg did not come within the strict meaning of the Crowsnest Pass Act, it had benefitted, as has already been shown²⁰ both by the reductions brought about by the Crowsnest Act and by the Manitoba Agreement. The rates to Winnipeg were not brought into effect by the terms of any specific agreement. None the less, the general nature of these two agreements brought the city of Winnipeg within their scope.

The step taken by the Canadian Pacific Railway Company in giving to Winnipeg the benefit of the balance of the Crowsnest Rate from Fort William, and their later action in reducing rates to conform to those established by the Manitoba agreement of 1901 may both have been without legal meaning, since they were purely voluntary. On the other hand, it should be remembered that these extensions and reductions were forced upon the company by circumstances over which it had no control. Practically, their effect was to widen for the time, the effect of the Crowsnest Pass Agreement.

The widened scope of the Crowsnest Pass Act as far as it concerned the Canadian Pacific Railway, was, until 1910, without any legal meaning whatsoever. The effect of the decision of the Board of Railway Commissioners, given in that year in the matter of the claim of the Regina Board of Trade, was to establish by law certain reduced rates of freight tariff between Fort William and Regina and thereby to place the widened meaning of the Crowsnest Pass Act upon a firm legal footing, temporarily at any rate.

The Western Rates Case

The next case that affected the freight rate level of Western Canada was that commonly known as the Western Rates Case. The inquiry into the merits of this case began in 1911, but decision was only arrived at in 1914. The complainants, the boards of trade of several western cities and others²¹, alleged that the tolls charged in the provinces of Western Canada (Manitoba, Alberta, and Saskatchewan) were higher than those charged in Ontario and Quebec. They also held that the Canadian Pacific Railway Company was unjustly discriminating in regard to tolls, (a) from Vancouver, B.C., to interior points in the western provinces as compared with tolls charged in like cases in eastern Canada, (b) on wheat and oats from Alberta to

the Pacific Coast as compared with tolls on the same commodities from the prairie provinces to Lake Superior.

The case was initiated by a resolution of the Winnipeg Board of Trade, which claimed that the Canadian Pacific Railway Company's western rates, were at the outset, based upon a much higher scale than that employed for fixing tolls in the east. The resolution urged that the discrepancy be removed as soon as possible. It was also pointed out, in support of the claim, that Sir Wm. C. Van Horne, former president of the Canadian Pacific Railway Company, had promised lower freight rates to Western Canada with the increase of traffic in that part of the country²², and that though tonnage had increased greatly, the promised reductions were not yet forthcoming.

The railway companies admitted that there was discrimination against the west, but maintained that eastern rates were forced down due to water competition and also to competition from railway lines in northern United States. The Board of Railway Commissioners had previously conceded that competition with United States railways, whose connections across the border enabled them to serve a large area in Canada, was an essential factor in determining freight rates in the east²³. The Board had also granted that the efficiency of the waterways systems of eastern Canada had also undoubtedly affected freight rates in that region of the country.

The railway companies also contended that lower rates were justified in the east due to greater diversity of traffic, better traffic conditions, return loads and a lower wage scale in that part of the country. It was held, however²⁴, that these considerations were more than offset by the long average haul and lower terminal expenses in the west.

Taking into account the water and United States rail competitions, the Board arrived at the conclusion that the discrimination in rates charged east and west of Port Arthur were justified by the terms of the Railway Act. The judgment, signed by Chief Commissioner Drayton, with the unanimous concurrence of the Board, acquiesced in some of the demands made, granting certain lower rates to the Provinces of Alberta and Saskatchewan. Until 1914, the rates in those provinces were higher than those in force in Manitoba, but the Board contended that operating conditions in the three Prairie Provinces were sufficiently similar to warrant similar rates.

There were, prior to the Western Rates Case decision, five scales of rates in Western Canada, namely : Manitoba, Saskatchewan, Mountain, Lake, Lake and Rail and Inter-lake Scales. The purport of the decision in the case under consideration was to abolish the Saskatchewan Scale and to bring the Manitoba Scale into effect in the territory formerly covered by the scale

they had abolished. The Manitoba Scale was effective in Manitoba, and in Ontario, west of and including Port Arthur, except the Canadian Northern LePas Line. The general basis of this scale was 15 per cent. lower than the Canadian Pacific Railway's maximum mileage tariff, No. 270 of 1894. The Saskatchewan Scale was operative in Saskatchewan and Alberta, except the short Canadian Pacific Mountain section between Canmore and Laggan and the Grand Trunk Pacific, west of Thornton. The scale was generally 7½ per cent. lower than uniform prairie tariff No. 270, mentioned above, the reduction being complementary to those made in Manitoba by the Canadian Pacific Railway Company.

Briefly reviewing the relationship of the western rate schedule to the rates outlined by the Crowsnest Pass Act before and after the Board's judgment, it is found that since the passing of the Act, reductions had been brought about by the Manitoba Agreement, the Canadian Pacific Railway Company's complementary reductions in Alberta and Saskatchewan, the Coast Cities decision, the Regina decision and finally, the decision in the Western rates case.

The Eastern Rates Case and Conditions in 1917

It is unnecessary to do more than outline the facts concerning the Eastern Rates Case, since this case did not bear directly upon the Crowsnest Pass agreement. The case has some importance in the history of the general structure of Canadian freight rates, however, as it brought eastern freight rates nearer the level of those charged in the West.

The case constituted an appeal by the Canadian Freight Association, acting on behalf of the Canadian Railways operating east of Port Arthur for higher freight rates. The inquiry into the merits of this case lasted from Feb. 17, 1915, to June 19, 1916. The principal bases of the claim were :

(1) That it was in the interest of the country at large as well as that of the railway companies that a greater revenue be obtained from freight traffic.

(2) The rate of return in net operating income on capital investment had greatly declined.

(3) The great increase in operating expenses was due to wage increases and increased cost of equipment and maintenance.

(4) That the return upon moneys invested by the railways was inadequate.

(5) That the borrowing power of the railways was diminished due to these factors, and that they were forced to meet increasing fixed charges out of declining net earnings.

(6) That war conditions had closed certain money markets previously open to the railways.

(7) That the Interstate Commerce Commission had already granted certain increases in freight rates in eastern United States.

It is sufficient to note here that the Board granted an increase of two cents per hundred pounds on first class freight, and one cent per hundred pounds on fifth class, the other classes being scaled proportionately. These increases, which amounted to about five per cent., were inoperative in certain territory in Quebec and the Maritimes.

In considering the Eastern Rates Case, attention should be paid to the fact that there was no legislation such as the Crowsnest Pass Act or the Manitoba Agreement to hamper the Board in their deliberations.

¹ Manitoba Statutes [1901] cap. 39; Statutes of Canada [1901], 1 Edward VII, c. 58

² *Ibid.*, Sched. B, para. 8.

³ 17 *Can. Ry. Cas.*, at pp. 215, 216.

⁴ *Annual Report, B.R.C.* (1911).

⁵ 3 Edward VII, c. 58.

⁶ 14, *B.R.C.*, p. 147, at p. 163, Boyce, C.

⁷ Section 23 of the Act reads :

"23. The Board shall have full jurisdiction to inquire into, hear and determine any application by or on behalf of any party interested :

(a) complaining that the company, or any person, has failed to do any act, matter or thing required to be done by this Act, or the Special Act, or by any regulation, order or direction made thereunder, by the Governor-in-Council, the Board, the Minister, or any inspecting engineer, or has done or is doing any act, matter or thing contrary to, or in violation of, this Act or the Special Act, or any such regulation, order, or direction;

(b) requesting the Board to make any order, or give any direction, sanction or approval, which by law it is authorized to make or give :

And the Board may order and require any company or person to do forthwith, or within or at any specified time, and in any manner prescribed by the Board, so far as is not inconsistent with this Act, or the Special Act, and may forbid the doing or continuing of any act, matter or thing which is contrary to this Act, or the Special Act ; and shall have full jurisdiction to hear and determine all matters whether of law or of fact, and shall, as respects the attendance of and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction under this Act, or otherwise for carrying this Act into effect, have all such powers, rights and privileges as are vested in a Superior Court.

The decision of the Board upon any question of fact, and as to whether any company, municipality or person is, or is not, a party interested within the meaning of this section, shall be binding or conclusive upon all companies and persons, and in all courts. Sub. for 51 Vic., cap. 29, s. 11."

⁸ Section 9 of the Act reads :

"9. This Act shall apply to all persons, companies and railways (other than Government railways) within the legislative authority of the Parliament of Canada, and shall be incorporated and construed, as one Act,

with the Special Act, subject as herein provided. 51 Vic., cap. 29, s. 3, Am."

¹⁰ Section 4 of the Act reads :

"4. Any section of this Act, may, by any Special Act passed by the Parliament of Canada, be excepted from incorporation therewith, or may thereby be extended, limited or qualified. It shall be sufficient, for the purposes of this section, to refer to any section of this Act by number merely."

¹¹ Section 6 of the Act reads :

"6. Where any railway, the construction or operation of which is authorized by a Special Act passed by the Legislature of any province, is declared, by any Special Act of the Parliament of Canada, to be a work for the general advantage of Canada, this Act shall apply to such railway, and to the company constructing or operating the same, to the exclusion of the provisions of the Special Act of the Provincial Legislature as are inconsistent with this Act, and in lieu of any General Railway Act of the province."

¹² Section 5 of the Act reads :

"5. If in any Special Act heretofore passed by the Parliament of Canada it is enacted that any provision of the General Railway Act in force at the time of the passing of such Special Act, is excepted from incorporation therewith, or if the application of any such provision is, by such Special Act, extended, limited, or qualified, the corresponding provision of this Act shall be taken to be excepted, limited or qualified, in like manner; and unless otherwise expressly provided in this Act, where the provisions of this Act or of any Special Act passed by the Parliament of Canada relate to the same subject matter, the provisions of the Special Act shall be taken to over-ride the provisions of this Act in so far as is necessary to give effect to such Special Act."

¹³ 14, *B.R.C.*, p. 165, Boyce, C.

¹⁴ 7, *Can. Ry. Cas.*, p. 125; *Annual Rept.*, *B.R.C.* (1908), p. 132.

¹⁵ Mills, C., dissenting.

¹⁶ *q.v.*, sec. 232.

¹⁷ 11, *Can. Ry. Cas.*, p. 380; *Annual Rept.* *B.R.C.* (1911), pp. 169-175.

¹⁸ C.P.R. Tariff, *C.R.C.* No. W.1966.

¹⁹ 1902.

²⁰ Scott, A.C.C.

²¹ *Supra*, p. 12.

²² Namely : The United Farmers of Alberta, The Canadian Manufacturers' Association and the Boards of Trade of the following cities : Toronto, Vancouver, Calgary, Victoria, Regina, Edmonton, Brandon, Moose Jaw, Saskatoon, Lethbridge, Prince Albert, Portage la Prairie, Medicine Hat, Nelson, and North Battleford.

²³ 17 *Can. Ry. Cas.*, p. 123 *et seq.*, summarizes the Canadian freight situation till 1914. A critical analysis of the Western Rates Case appears in *Railway Rates and the Canadian Railway Commission* (D. A. McGibbon) p. 107 *et seq.*

²⁴ *Ibid.*, p. 159.

²⁵ Drayton, C.C., *Ibid.*, p. 156.

CHAPTER III

FREIGHT RATE LEGISLATION AND THE CROWSNEST PASS ACT, 1918-1927

The Fifteen Per Cent Case—The McAdoo Award and the Temporary Suspension of the Crowsnest Agreement—The Special Committee to Consider Transportation Costs, 1922—British Columbia's Appeal for Lower Westbound Freight Rates—Complaints and Decisions Regarding the Crowsnest Pass Agreement in 1924-25—Recent Litigation and Legislation and the Position of the Crowsnest Pass Act To-day

The Fifteen Per Cent. Case

The application of Canadian railways in 1917 for a general increase of 15 per cent. in freight rates, commonly known as the Fifteen Per Cent. Case, has special importance in Canadian freight rate history, not only because it decided that the railways, under circumstances then prevailing, were entitled to the higher rates they demanded, but also because the inquiry into the merits of the claim demonstrated with great clearness, the ill-effects of an Act of Parliament passed twenty years previously, under entirely different conditions.

Though most of the Boards of Trade represented at the hearing readily acquiesced in the demands of the railway companies for higher rates, many interesting facts were revealed by those who were opposed to the increase. Several of the pronouncements of Sir Henry Drayton, the Chief Commissioner, during the course of his judgment, are also valuable, and make it desirable to set out here a fairly complete account of the proceedings.

The railways' request for increased rates were based upon the contention that greatly increased costs of operation and maintenance made it impossible for them to carry on successfully and render adequate service at the rates then prevailing¹. Throughout the country, the increase was regarded as inevitable, and it was generally felt that the amount of increase be left to the discretion of the Board. It was also suggested that certain heavy articles, such as coal and gravel, be not subjected to as great an increase as might be imposed upon other commodities.

Nothing further need be said regarding the opinions which coincided with those of the railway companies, and it is necessary to turn now to the contrary opinions, most of which came

from the west. The Vancouver Board of Trade, in support of their claim that the proposed increase was unwarranted, said :

"To a very substantial extent, the freight charged the "people of Vancouver by the railways, emanated from the "eastern seaports or adjacent points. An increase of 15 "per cent. from these points would probably not be urged "by the railway companies if the people of Vancouver were "permitted to make use of the Panama Canal."

The counsel for the same Board of Trade also attempted to show, by a comparison of figures¹ that the Canadian Pacific Railway Company did not actually require the increase for which, in company with the other railways, it was asking. The claims advanced by the other western cities were along the same lines.

It was pointed out by the counsel for the Grain Growers of Manitoba that the effect of the increase asked for would be to give the Canadian Pacific Railway Company some \$18,000,000 of added revenue it did not require, while the other applicants that needed assistance would get little better than \$5,000,000 apiece¹. The counsel for the Province of Manitoba¹ claimed that the railways, in their application, were trying to over-ride agreements. The first agreement to which he referred was the Crowsnest Pass Act, and the second, the Manitoba Agreement of 1901.

The same counsel in a previous address to the Board, maintained that any increase of rate would fall in the main upon the shippers in Western Canada. Contradicting this assumption, Mr. Phippen, counsel for the Canadian Northern Railway, said that the increases which were calculated upon gross operating revenues would fall most heavily upon the east. In support of his contention he presented the following figures for 1917 :

Operating revenue on lines east.....	\$59,459,718
" " " " west.....	81,300,267
Mileage, east.....	4,827
Mileage, west.....	8,125
Gross revenue per mile, east.....	12,313
" " " " west.....	9,957

An examination of the tariff situation on barrelled coal-oil in carloads from Fort William to a few typical points applicable first, following the Crowsnest Agreement, second, in 1918, and third, as they would stand after a general increase of 15 per cent., reveals the fact that due to the agreement made between the Dominion Government and the Canadian Pacific Railway Company in 1897, it would be impossible to make a general increase of 15 per cent. in this commodity.

FROM FORT WILLIAM

To	Crowsnest, cents	1918, cents	15% increase
Winnipeg...	45½	33	39
Brandon....	53	49	56
Regina.....	71	65	75
Medicine Hat	88	84	96½
Calgary....	96	95	109½
Lethbridge..	92	90	103½
Saskatoon...	93	74	85
Edmonton..	120	95	109½

It should be noted that only to the first and two last points mentioned on the table was the 15 per cent. advance possible. It is beyond the scope of this discussion to determine whether or not the 15 per cent. increase asked for was justified, but the table presented above illustrates clearly what has been said before, namely, that the Board of Railway Commissioners' work was being hampered by antiquated legislation. An investigation of rates on agricultural implements from Fort William to points west reveals exactly the same situation⁶.

An important consideration before the Board at this time was the determination of the exact legal status of the Manitoba Agreement. Economic considerations dependent upon the decision arrived at, were, it should be added, given some thought. It had previously been determined that operating conditions in the Prairie Provinces were similar⁷ and it was felt by the Board that to give effect to the Canadian Northern-Manitoba Agreement, and to confine its operations to Manitoba would be to restore again the discrimination which had been found to exist as against Saskatchewan and Alberta.

The Board considered that the question which it had to determine was, whether in the light of the above facts, effect ought to be given to the Manitoba Agreement. It was pointed out that if such effect were given, practically no rate increase could be made in Western territory, where the great bulk of the Canadian Northern Railway Company's business was carried on. If public convenience and necessity were overlooked, and the usual legal practices as between parties to commercial contracts alone followed, there was, according to the Board, no ground for relief.

The Fifteen Per Cent. Case is best summed up by quotations from the judgment of the Chief Commissioner, Sir Henry Drayton⁸. The Chief Commissioner dealt with two distinct aspects of the case, legal and economic, and since this section of the discussion is an account of legislation and judgments, the legal side is presented here at greater length. More detailed

consideration of the economic problems surrounding western freight-rate structure is given in the chapters following.

The excerpts from the judgment⁹, quoted below, form what are commonly known as *obiter dicta*, but they are of great importance both because they illustrate to some extent, the line of reasoning adopted by the Board in arriving at its decisions, and also because they show that in certain quarters, the improvidence of special freight rate contracts had already begun to be realized.

The Chief Commissioner said :

"Parliament has so authorized railway construction "that the line of one company or another parallels those of "others to such an extent that in many instances an un- "reasonably low rate reserved by contract made by one "company must be adopted by the other line. As a result, "the other companies are just as much injured as is the "company to the contract, and by an act over which they "have not the slightest control.

"It is also apparent that an agreement which reserves "an unremunerative rate applicable in one district as "against other districts where traffic and operating con- "ditions are similar, directly infringes upon the provisions "of the Act requiring uniformity in rates.

"The chief traffic of the west is grain. The Crowsnest "Pass Agreement will not permit a general increase of 15 "per cent. to be made to the Lake Superior ports; but the "rate could be increased by ten per cent. The Canadian "Northern and Grand Trunk Pacific Railway Companies "are not bound by the Act, but, due to competition, would "be forced to keep their rates at the same level as those of "the Canadian Pacific Railway Company.

"The Crowsnest Pass Agreement again, does not call "for lower rates for the whole territory as now operated—it "applies only to operations of that time."¹⁰

Reviewing conditions in this way, Sir Henry Drayton felt that discrimination should be avoided, and that the Crowsnest Act must be interpreted to cover the railway systems as they existed in 1918. He pointed out further, that while it was undoubtedly true that in so far as western territory was concerned, on the great bulk of traffic, rates would only increase approximately ten per cent., and eastern rates were, generally speaking, raised 15 per cent., it should be borne in mind that western rates were still higher.

The Chief Commissioner summarized the legal side of the case as follows :

"There is no doubt that there is authority for the "proposition that the passage of an Act giving a new

"Commission by it formed, full jurisdiction to fix just and reasonable rates, freight and passenger rates, automatically repealed previous maximum rate laws—the basis supporting such proposition, of course, being that the object of the legislature is plainly declared, namely, the fixing of just and reasonable freight and passenger rates, having proper regard, not only to the question of reasonableness and fairness of the rate itself, but also to the principle of equality as between different districts and shippers, which would be defeated by the continuance of Special Act giving special rights to any particular district of the country, or creating rates, which by change of circumstances and conditions could not be described as just or reasonable.

"I am of the opinion, however, that the principle cannot be applied in the present instance.

"Section 3 of the Railway Act specifically provides that, unless expressly provided in the Act to the contrary, wherever the provisions of the Railway Act, and of any Special Act passed by the Parliament of Canada, relate to the same subject matter, the provisions of the Special Act, shall, in so far as it is necessary to give effect to such Special Act, be taken to override the provisions of the Railway Act.

"A specific reduction worked by the Special Act, therefore, limits the general jurisdiction of the Board, having regard to rates. In my view, no matter how great the shortage may be in railway revenue, the Board cannot advance these Canadian Pacific rates beyond the reduction secured under the Special Act."

Further on, dealing with the Manitoba Agreement and the Canadian Northern Railway, the Chief Commissioner says : "The situation in connection with the Manitoba Agreement is entirely different. There, the Act is of a provincial legislature, which does not bind the Board."

Owing to an appeal against the order of the Board calling for increases in rates, the increases did not go into effect until March 15, 1918. It is clear from the judgment of the Chief Commissioner that while the Board was authorized to fix just and reasonable rates and also to apply the principle of equality as between different districts and shippers, that principle could not be applied because of the limitation placed upon the Board under section three of the Act.

The McAdoo Award and the Temporary Suspension of the Crowsnest Pass Agreement

In the year 1918, Director-General McAdoo of the United States Railways was forced, in order to avoid serious labour

troubles, to increase substantially the wages of railway employees. In order to balance the railways' budgets, he directed that freight and passenger rates be increased throughout the country.

The McAdoo Award is popularly supposed to have increased rates by 25 per cent. Though in few cases this amount was exceeded, in some instances, due to specific flat increases, this percentage was not obtained¹¹. The McAdoo Award has particular importance, not only in general Canadian freight rate history, but also in the specific subject under discussion here, since it gave rise to the temporary suspension of the Crowsnest Act. It was only when the Act was restored in part, three years later, that the full economic importance of this Act became sufficiently apparent to merit continued discussion.

Following the McAdoo Award, the opinion was expressed that in view of the increased cost of living the wages of railway employees in Canadian territory should be increased as in American territory, provided, that should private companies adopt the scale, their rates should be raised to meet the situation¹². There was no intention of increasing the railways' profits, but merely of enabling them to meet rapidly rising maintenance costs and of preventing the collapse of the transportation systems of Canada.¹³.

Having virtually no option in the matter, the privately owned Canadian railways accepted the suggested wage-increases, and the new scale of rates as evolved by the Board of Railway Commissioners was put into effect by the terms of Order-in-Council, No. P.C. 1863, dated July 27, 1918¹⁴.

This order provided that in the territory east of Fort William, all class rates should be increased by 25 per cent., and all commodity rates in accordance with a definite schedule. Commodities not specifically enumerated were subject to the 25 per cent. increase. West of Fort William class rates were likewise increased by 25 per cent., based upon tariffs actually in force before March 15, 1918, the date upon which the 15 per cent. increase went into effect. Increases which the Board had made since that date were to be disallowed. As far as Western Canada was concerned, the 25 per cent. increase included the increase of 15 per cent. Commodity rates were increased according to schedule, those not enumerated being increased 25 per cent., subject to disallowance of increases from March 15, 1918¹⁵. All these rates were to become effective as of August 12, 1918. The Order-in-Council was ratified by Parliament in 1919, to be effective for a period of three years.

As a result of this order, rates higher than those allowed under the Crowsnest Pass Agreement were established for the first time. It should again be noted that the Crowsnest Pass

rates were only interfered with because of the extraordinary conditions attendant upon the war. The natural changes which the country had undergone since 1897 were not considered by the Board in their deliberations.

The Special Committee to Consider Transportation Costs, 1922

An important event of the parliamentary session of 1922 was the question of renewing or amending the Crowsnest Pass rates agreement. Unless some legislation was passed at the 1922 session of the House the amendment to the Railway Act which brought about the temporary suspension of the Crowsnest Pass agreement¹⁶, would expire by limitation and rates automatically return to the 1897 basis under the terms of the agreement.

The railway companies contended that circumstances did not justify the reduction of rates to the Crowsnest standard and maintained that if they were forced to adopt this schedule of rates, they should be unable to make reductions in the rates of basic commodities. The latter step was one they suggested as a much superior alternative to the adoption of the Crowsnest scale, being a move which they felt would be of far greater benefit to the country as a whole.

Before considering the formation of the Special Committee to Consider Transportation Costs, and its findings, it is necessary to outline briefly the principal rate-changes made between 1919 and 1922.

Subsequent to the "McAdoo Award", a decision known as the "Chicago Award" allowed United States Railroads to make further increases. Using the "Chicago Award" as a basis, the Board of Railway Commissioners allowed, on September 30, 1920, a general increase of 40 per cent. in eastern Canada and 35 per cent. in western Canada, although there were certain specific cases in which the increases granted were smaller. At this stage the apex was reached and the following year saw the first reduction.

In 1921 the railway companies voluntarily made several important reductions, thereby considerably reducing their revenues. An important reduction was on grain for both export and domestic consumption from Fort William to the lake ports. Due to the somewhat serious condition of the livestock industry, rates were reduced by about 25 per cent. Further reductions included hay in eastern Canada, lumber from the Pacific Coast and on wool and hides from western Canada to the eastern Provinces¹⁷.

On July 16, 1921, wage reductions were effected on both United States and Canadian railways. Following this, the Board of Railway Commissioners began an investigation to

determine whether or not a change should be made in Canadian rates. As a result of this investigation the following reductions were ordered on December 1, 1921.

(1) In territory east of Fort William and Port Arthur rates were reduced to 25 per cent. over the rates in effect before September 13, 1920.

(2) In territory west of Fort William rates were reduced to 20 per cent. over rates in effect before September 13, 1920.

(3) On through rates between eastern and western territory the above percentages were to apply to east and west factors respectively.

(4) Transcontinental commodity rates were to be constructed on the basis of a decrease of 23½ per cent. over rates in effect before September 13, 1920.

These were the rates in effect when Parliament faced the Crowsnest question in 1922. A motion by the Hon. W. C. Kennedy, Minister of Railways and Canals in the Mackenzie King Government, called for the selection of a Special Committee of Parliament to investigate thoroughly the question of Canadian Transportation Costs¹⁹.

In supporting the motion, the Minister of Railways and Canals reviewed the history of the Crowsnest Pass agreement and pointed out that it was the purpose of the proposed Special Committee to deal with the problem of transportation costs as it specifically affected the Crowsnest agreement and not as it might touch upon freight rates in general²⁰.

Speaking against the motion, the Rt. Hon. Mr. Arthur Meighen gave a comprehensive review of the whole situation, showing how the Crowsnest Act had been extended in meaning, describing the powers of the Board of Railway Commissioners, and outlining the passage of the amendment to the Railway Act, suspending temporarily the Crowsnest Act. He brought the details down to the time at which he was speaking and maintained strongly that the Board of Railway Commissioners, and not a special committee of Parliament, was the proper body to undertake the investigation purposed. The leader of the Opposition made little attempt to discuss freight rates as such, confining his remarks to a strong plea for the supremacy of the Railway Commission in matters such as the one at hand²¹.

Members of the Progressive Party favoured the appointment of a special commission and seemed inclined to the view that the findings of such committee would be favourable to their point of view, namely, that the terms of the Crowsnest Pass agreement be restored.

It was suggested by J. A. Stewart that the Crowsnest Act be revised, and not restored in its original form. He described

the changes in the movements of commodities described in the Crowsnest agreement and emphasising these changes, said :

" . . . But I do urge that having regard to general conditions in Canada, and to the altered conditions since 1897, there is a real question as to whether the express terms of the Crowsnest Pass agreement operate fairly and equitably to all Canadian interests."²¹

Mr. Stewart also expressed himself strongly against the formation of a special committee, feeling that the Board of Railway Commissioners was the only body competent to deal with the situation.

Finally, Sir Henry Drayton moved an amendment to the bill, requiring the Government to acquire from the Board of Railway Commissioners all the necessary data, and subsequently declare a definite policy regarding the Crowsnest Pass agreement. The amendment was defeated²².

In order to present the legal history of the Crowsnest Pass agreement without a break it is necessary here to give some account of the proceedings of the Special Committee to Consider Transportation Costs²³. This account has here been very briefly summarized, as a closer examination of the evidence submitted will form a large part of the text of a subsequent chapter.

Representatives of the railway companies submitted that the restoration of the Crowsnest Pass agreement removed all possibility of their making contemplated reductions on basic commodities. These proposed reductions ranged from 11 to 17 per cent., and, according to the railways would give encouragement to many forms of enterprise. The railways also claimed that if the Crowsnest Pass agreement were restored it would deplete their revenues seriously at a time when they were facing extremely high operating costs. They also alleged that their payroll, over which they claimed to have no control, was also unduly high at that period. For these, and other reasons, the railways deemed it advisable to continue the suspension of the Crowsnest agreement, and to refer the general reductions which they volunteered to grant to the Board of Railway Commissioners.

Farmers, Boards of Trade, and general merchants of western Canada, on the contrary, were vitally interested in demanding the restoration of the agreement. The principal arguments advanced in support of their contention were :

(1) The fact that grain represents a very large proportion of the traffic of Western Canada.

(2) That the earnings are higher and the operating expenses lower with grain traffic than with any other commodity carried in Western Canada.

(3) That the earnings from Western lines of railway in proportion to total earnings from the entire systems throughout the Dominion represent a much larger percentage than from any other area.

Agriculture, according to the west, was under a severe handicap because the freight rates in force were greatly diminishing the monetary return that the farmer was receiving for his grain, and further, staple commodities required by the farmer were far too high in price for the same reason. The general prosperity of the country, they claimed, was in a large measure dependent upon agricultural prosperity. Hence the continued suspension of the Crowsnest agreement would work hardship upon the entire Dominion. Further, they contended that the non-restoration of the Agreement would be nothing more nor less than a breach of faith.

Representatives from the West also challenged the railways' statement that the application of the Crowsnest rates would reduce their revenues by many millions. They maintained that the reduced rates would stimulate traffic over a period of years, and that hence, the railway companies' revenues would not suffer.

Representatives of the Maritime provinces, of the lumber interests, of the pulp and paper associations, and of the Eastern Boards of Trade did not wish to see the Crowsnest rates applied once again if the result of their reinstatement would be to deny reductions of any sort on commodities other than those mentioned in the agreement.

When evidence from all sources had been heard, a sort of preliminary report was prepared which seemed to favour the prolonged suspension of the Crowsnest Pass agreement and the promised reductions in numerous basic commodities.

As matters then stood, however, neither of the three parties in Parliament had a clear majority, the Liberals being dependent for their power upon Progressive support. The policy first outlined by the Special Committee could only have met with the emphatic disapproval of that party, and it was absolutely necessary to prepare a report which could be carried through the House. Accordingly, the report as finally drafted was a compromise designed to meet the political exigencies of the time. It recommended the immediate adoption of the Crowsnest rates on grain and flour and the indefinite suspension of the Crowsnest rates on other commodities, leaving all other matters connected with their recommendations in the hands of the Board of Railway Commissioners.

Concluding a summary of the evidence taken before this Committee, Professor W. T. Jackman, of the University of Toronto, says :

"There is no question that the recommendation of the Committee's report . . . was due to political expediency; "the Government had to have the assent of the Western "members before it could be sure of carrying through its "policy."

During the course of its career the Special Committee often seemed to be in a quandary and it is difficult to understand now why the whole matter was not referred to the Board of Railway Commissioners.

A Statute was passed in 1922 extending the operation of Section 325-6 of the Railway Act of 1919²⁴, which gave unrestricted power to the Railway Board except as concerned grain and flour rates. This subsection was extended to 1923, with power, however, to the Government by Order-in-Council to extend it for a further period of one year if circumstances seemed to justify that move. The Government, in the following year, exercised that power and continued the suspension until July 6, 1924²⁵.

British Columbia's Application for Lower Westbound Freight Rates and the Board of Railway Commissioner's Order of Nov. 1, 1923

The Special Committee to Consider Transportation Costs, which met in 1922, neglected, according to British Columbia, the claims for equalization of rates which that province advanced, and in 1923 the province appealed to the Privy Council for adjustment of the case. The Privy Council did not act, but referred the matter to the Board of Railway Commissioners²⁶. The majority²⁷ judgment of the Board brought into effect a ten per cent. reduction in grain and grain products westbound²⁸.

The wording of that portion of British Columbia's appeal which was referred to the Railway Commission is as follows :

"To cease from making and charging higher tolls, for
"the transportation of wheat, corn, oats and other grains,
"flour and other mill products, hay, straw, flax and other
"agricultural products from points in the provinces of
"Alberta, Saskatchewan and Manitoba to points in the
"province of British Columbia, than are charged for the
"transportation of such wheat, corn, oats and other grains,
"flour and other mill products, hay, straw, flax and other
"agricultural products from points in the said provinces of
"Alberta, Saskatchewan and Manitoba and Ontario as far
"east as and including Fort William and Port Arthur over
"the same or similar distances."²⁹

The claim was made before the Governor-General-in-Council by representatives of the Provinces of British Columbia and Alberta that the rates on eastbound grain, as defined by the

Crowsnest Pass agreement, should be applied to all grain moving westward for export as well as to eastbound traffic. With this claim before them, the Board set about to determine to what extent the Crowsnest rates were, and should be binding upon it in arriving at just and reasonable rates as between transportation companies and the public.

The Board declared, that having in mind the care which was taken in arriving at the decision in the Western Rates Case, the opinion was justified that in arriving at a revised basis for grain for export by way of Vancouver, it was proper to take into consideration the export rate basis by way of Montreal. Supporting this view, the board also drew upon decisions of the Interstate Commerce Commission, in which it was recognized and held that there is no necessary relation between export rates and domestic rates.

Reviewing the history of the Crowsnest Pass agreement, the Board also decided that apart from the very plain reading of the Act itself, and of the provisions of the Railway Act, the intention was clear that the rates established by Parliament for particular reasons and under special conditions, were not to be taken as the basis or standard of other rates, especially so with regard to the westbound Crowsnest Pass Railway to British Columbia, and also that the powers of the Board of Railway Commissioners should not in any way be affected or restricted by the specific rate-fixing clauses of the Act. The effect of the legislation, therefore, the Board contended, was that solely in respect of the specific articles and products to be included in the agreement, and as to which, by the agreement and for the consideration, of the subsidy in the Act mentioned, the railway company reduced its rates within the specified territory, but that as to other rates and tolls, they were to be fixed by the rate-fixing tribunal in the fullest and widest exercise of its jurisdiction to fix just and reasonable rates upon all other traffic upon all railways within its jurisdiction¹⁰.

It was further contended that the legislation of 1922 merely interrupted temporarily, the currency of the Act of 1897. Under these circumstances the Board felt that the argument advanced by the two western provinces, namely, that westbound grain rates be based upon those in the Crowsnest Agreement, was not well founded and that some other method of procedure was necessary in order to arrive at just and reasonable rates in this case.

The Board determined that the most satisfactory method of arriving at a just rate would be to take a point midway between Fort William and Vancouver and establish therefrom to Vancouver a rate based on the eastbound rail haul to Montreal. Cantuar, on the Canadian Pacific Railway, a point 942 miles

from Fort William and 944 miles from Vancouver was selected. Working on this plan, which, the Board pointed out, gave Vancouver all the advantages of the Crowsnest rate to Fort William, plus the advantage of a water and Buffalo-New York "compelled" rate from eastern Canadian Bay ports to Montreal, the following scale was evolved ¹¹:

To Vancouver—		Actual rate cts., 100 lbs.	Proposed rate cts., 100 lbs.
From	Miles		
Calgary.....	642	25	22
Bassano.....	721	26	23
Edmonton....	771	25	24
Medicine Hat.	818	27	24
Vegreville.....	844	27	25
Cantuar.....	944	28	27
Swift Current.	957	29	27
Moose Jaw....	1,067	31	28

The result, as above obtained, did not provide in some instances a strictly mileage basis, and for that reason, and in order to preserve as far as possible the existing rate structure, the Board finally decided that the fairest rates could be obtained by a general reduction upon westbound grain of ten per cent. Similar reductions were to apply to grain products.

The dissenting judgment of Commissioner Oliver is interesting ¹². He maintained that the rates then in force, though similar to those provided for in the Crowsnest Pass Act, were entirely independent of that agreement, having been established by the statute of 1922 ¹³. The rates established in 1922 were substantially lower than those formerly prevailing and he contended that a fair assumption was that parliament recognized them as more suitable under existing conditions.

In support of his contention that the Crowsnest Act was not actually in force at the time, he pointed out that this Act called for reductions in many commodities other than grain, and the Statute of 1922 gave force and effect to rates on these enumerated commodities, that do not coincide with those laid down in the Crowsnest Act. Under the circumstances, he felt that the rates then in effect on the prairies should be made the basis of rates westbound. He recognized the fact that other factors beside mileage entered into the cost of railway service, but declared that he could not admit that "mountain rates" were proper on the Canadian National Railways, since that system had been expressly constructed with a view to overcoming the very difficulties which gave rise to these "mountain rates".

He suggested that inasmuch as grain rates virtually passed out of the control of the Board for one reason or another at Fort William or Port Arthur, these places were, for all intents and

purposes, the real points of export and that therefore there was no justification for instituting a comparison between the export grain rates east of the lakes and those west of the lakes. For these reasons he felt compelled to support the application of the Provincial Governments regarding export grain rates.

The legal basis of the Commissioner's reasoning does not appear to be sound in view of the fact that it was the absolute intention of parliament to prolong the suspension of part of the Crowsnest Act as such, and retain a further part. His conclusions are none the less interesting, and will be developed along with others in a subsequent chapter.

Complaints and Decisions Regarding the Crowsnest Pass Act in 1924-25

Early in 1924 a memorandum was presented by the railway companies to the Government describing the necessity for further suspension of the Crowsnest rate schedule. This memorandum showed that the sources of supply of many of the commodities enumerated in the Act were completely changed, and that instead of coming from the east as they did in 1897, a considerable portion was coming from the west. The financial situation was reviewed, and operating costs were shown to be 140 per cent. higher than in 1897. Disparities and discriminations were also discussed in the memorandum.

On June 27 and 28, 1924, representatives of the railway companies and of the prairie provinces⁴⁴ met the Governor-General-in-Council⁴⁵ in order to present their respective cases in the matter of the restoration of the Crowsnest Pass rates, which had been suspended in 1918, and only restored in part in 1922. In the ordinary course of events the remainder would automatically be restored on July 7, 1924. The legislation by which this was brought about has already been described⁴⁶.

Counsel for the railways attempted to show that great disparities in rates would result if the terms of the Crowsnest Pass agreement were restored, since it was his contention that the rates applied only to commodities specifically enumerated and to territory actually operated by the Canadian Pacific Railway Company in 1897. He declared that not only would ridiculous discriminations be set up, but also that operating costs and conditions were the same as they had been in 1922 and consequently, the enforcement of the Crowsnest scale would entail great losses to the Canadian Pacific Railway.

For competitive reasons, the Canadian National System would be forced to adopt the Crowsnest scale in certain areas. This system, at the time, was working under severe handicaps and facing large annual deficits, and the imposition of these rates would work further hardships on the National lines. He

compared the scale of wages in force in 1897 with those of 1924, indicating large increases in every department and cited other changes in conditions which he thought should influence Parliament to continue the suspension of the particular terms of the Crowsnest Pass Act then under consideration.

H. J. Symington, K.C., representing the prairie provinces based his argument for the complete restoration of the Crowsnest rates upon two facts, namely : first, that the Crowsnest Pass Act was a contract entered into between the people of Canada and the Canadian Pacific Railway Company, and as such, its terms should be perpetually fulfilled; second, that the disparities which the railways claimed the restoration of the Act would bring about, would not, in actual practice, take place. Enlarging on the first argument, he pointed out that the temporary suspension of the Crowsnest Act was brought about by abnormal post-war conditions and that the very way in which the Government treated the matter conclusively proved that they recognized the Act as a contract which was to be preserved forever. He declared that the Crowsnest Pass Act had not, until 1922, afforded the prairies any protection, since up to that time, for one reason or another, the maxima allowed by the Act had never been charged. As soon as the Crowsnest Act had begun to act as a protection to the west, the Canadian Pacific Railway Company started to complain about the unfairness of the terms.

Developing his refutation of Mr. Lafleur's argument that the restoration of the Crowsnest rate scale would give rise to disparities in rates, he claimed that the alleged disparities would have to be removed by the Board of Railway Commissioners in the course of their duties. He described the operation of the "arbitraries" in the Maritimes and held that in actual practice, the restoration of the Crowsnest rates would not interfere with these, and hence, that the Maritime provinces would not suffer.

British Columbia was not represented by counsel, but several delegates from that province spoke briefly, alleging that the Crowsnest scale discriminated against them. Further information all of a technical nature was supplied by counsel and general freight managers of each of the railways. Once again, however, the Government seemed to be influenced by political rather than economic considerations. It was extremely anxious to retain the voting strength of the west, and that part of the country was, of course, decidedly in favour of a complete return to the Crowsnest scale. As a result, the railways were forced, on July 7, 1924, to restore the low rates made effective by the Act of 1897.

The extensions, in practice, of the terms of the Crowsnest Pass Act to include the entire mileage of the Canadian Pacific Railway Company and not only that in operation in 1897, and its

extension to the lines of other companies has already been described. When the railways were forced, in 1924, to revert to the old rates, they decided upon the advice of their counsel and in order to safeguard their revenues, to interpret the Crowsnest Act to the letter, and to give effect to the low rates only upon lines actually in operation in 1897. Following this announcement, both the Board of Railway Commissioners and the Government received innumerable complaints regarding discrimination. Complaints addressed to the Board were handed over to the Government, as the chairman of the Railway Board claimed that the Board had no jurisdiction in a matter which involved an Act of Parliament. In order to avoid political complications, however, the Government returned all the complaints received to the Board of Railway Commissioners, declaring that the Board had been expressly created to decide questions such as these. It was decided to begin the hearings before the Board on September 17. The hearings occupied seven days and the majority decision was delivered on October 7³⁷.

The economic arguments advanced by counsel for the opposing sides were extensive and will be fully developed later. Briefly these were : The prairie provinces claimed that the Crowsnest rates could not be regarded as "forced" rates, such as those made effective through water competition, since the Canadian Pacific Railway Company had voluntarily entered into an agreement establishing these rates. The Board had, in 1917, declared that it was beyond their power to raise the Crowsnest rates above the maxima provided, and hence, the only possible way in which present discrimination could be removed was by a downward revision to the Crowsnest scale.

The claims of British Columbia were based upon the contention that the re-establishment of the westbound Crowsnest rates discriminated against them and in favour of the eastern shipper, since the Crowsnest territory stopped at Revelstoke, B.C., just west of the Alberta border. They held that eastbound rates from the coast, on commodities enumerated in the Crowsnest Pass agreement should be reduced so as to conform to the westbound rates. They urged, further, that when the agreement was originally entered into, British Columbia occupied a comparatively unimportant position in Canadian economy and that the direction of traffic flow of many commodities concerned had been totally reversed. Further, the opening of the Panama Canal had changed the situation considerably.

The maritime provinces contended that it was unfair to fix western rates by a specific Act of Parliament and have Maritime rates adjusted solely by the Board of Railway Commissioners. They felt, also, that if one part of the country received the

benefit of particularly low rates, the remaining parts would have to contribute to this by payment of excessive rates.

The railways argued that they were following the strictly legal interpretation of the Act. Their counsel maintained that the Board had full power to adjust rates and that no exception to its jurisdiction existed. Attempts were made to show that in the course of important decisions during the sixteen years previous, the Board had implied that it was not in any way bound to restrain itself from interfering with the Crowsnest rates. They felt certain, also, that the Crowsnest Act was not intended to be oppressive to third parties, included in which were railways that were neither built nor projected at the time. The Railway Act of 1903 had, in their opinion, superseded the Crowsnest Act of 1897.

The evidence submitted has been summarised as follows³⁸:

1. That the Canadian Pacific rates specified in the agreement of 1897, while fair and reasonable at that time, are inadequate to the present conditions, and do not constitute more than 35 per cent. to 60 per cent. of rates which would be reasonable for the service rendered.

2. That the continuance of the contract rates of 1897 compels unjust and unfair reductions by other railways, not parties to the contract in competitive territories, and causes unjustifiable losses to the company.

3. That the rates in force July 6, 1924 (except the Crowsnest rates on grain and flour made effective by the Act of 1922), were equitable and reasonable to all companies, and had been permitted by the Board after full examination; but the rates made effective July 7, 1924, were unjust, unreasonable, subversive of a stable rate structure and not based upon any sound principle applicable to existing conditions.

4. That the Canadian National Railways were entitled to just and reasonable rates, but under the existing conditions they cannot obtain them because they are compelled to meet the low rates of the Canadian Pacific Railway in competitive territory.

The majority³⁹ judgment⁴⁰ of the Board held that "the disruption of the freight rate structure resulting from the tariffs in question⁴¹ has created a condition of disparities without any parallel in the history of freight rate making in Canada."⁴² Accordingly, the Board undertook to examine carefully the nature of its authority. Definite authority had been granted to the Board by the Act of 1903⁴³, so that the extensive investigation into this authority was an inquiry into the nature of numerous cases considered and decisions rendered by the Board by virtue of powers given to it by statute. In other words, the Board wished to define its own position by determining how it had, from time to time interpreted the Act creating it.

The Board determined that it was its duty among other things to allow fair rates to the railways for the services they perform, and that it could neither order nor enforce rates which are unremunerative to the railways. To do so would be to infringe upon the principle of the Railway Act. If the rates in some districts are so low as to be unremunerative, a discrimination is set up against other districts with similar operating conditions where rates are necessarily higher.

In a previous judgment⁴⁴, Sir Henry Drayton, at that time Chief Commissioner, held that the Crowsnest Pass Act bound the Board. The case then under consideration, however, did not concern the Crowsnest agreement directly, and the former Chief Commissioner's statement was held by the Board in 1924 to be merely *obiter dictum*. In this instance, on the other hand, the sole consideration before the Board was the status of the Crowsnest Act.

In the course of the judgment, the Railway Act, under which the Board was constituted, was closely and critically examined, and the Board decided, citing considerable jurisprudence, that there could not be found in that Act any suggestion that the jurisdiction conferred upon the Board was in any way circumscribed by an Act passed six years previously, granting special rates on specific commodities over defined lines of railway.

Quotations were given from several British cases to show that "unless you are obliged to do so, you must not suppose that the legislature intended to do a palpable injustice".⁴⁵ These quotations were intended to prove conclusively that the Crowsnest Act had become submerged in the Railway Act of 1903. In this connection, the Board held that the legislation of 1922, by virtue of which the Crowsnest rates on grain and flour were restored, and the rates on other commodities enumerated in that agreement suspended for a further period, was entirely inconsistent with the Railway Act of 1903. Under these circumstances it was the duty of the Board to exercise its statutory functions under the Act of 1903, and disregard entirely the special legislation which was claimed to be inconsistent.

The Board arrived at three conclusions. In the first place it decided that under the Railway Act, the Board had control over the tolls and tariffs of all railways coming under its jurisdiction⁴⁶. Secondly, that for the purpose of adjusting the disparities then existing, the Board may and should make all adjustments necessary to the complete restoration of equity and stability of rates throughout the country, and in so doing, it is not bound by such agreements as that entered into in 1897 between the Government of Canada and the Canadian Pacific Railway Company. Finally, that in order to remove existing disparities, injustice and discrimination in rates, the railways should cancel,

on October 27, 1924, the tariffs made effective on July 7 of the same year, and restore those which were in effect on July 6, 1924⁴⁷.

The dissenting commissioners, McLean and Oliver, disagreed with the statement that the Board was not limited in its jurisdiction by the Crowsnest Pass Act. The very fact that Parliament had expressly permitted the Board to over-ride the Act in 1919 was conclusive proof that the limiting power of the Crowsnest Act existed. Commissioner Oliver concluded that the Crowsnest Act applied to all lines and connections of the Canadian Pacific Railway in Canada, and that the Crowsnest rates should therefore be effective on all these lines and that the Canadian National System also be obliged to adopt the Crowsnest scale in order that discrimination be prevented⁴⁸.

Immediately after the decision of the Board had been rendered, the prairie provinces sent petitions to the Premier asking that the Board's order be suspended and not allowed to go into effect. Leave to appeal to the Supreme Court of Canada was granted on the question of law. An appeal was also made to the Governor-General-in-Council.

For political purposes, once again, an order was issued on December 24, before the Supreme Court sat, restoring the Crowsnest rates. With the re-establishment of these rates the old discrepancies again became apparent.

Two important principles were laid down in the Supreme Court's judgment⁴⁹, namely, that the Board of Railway Commissioners was not authorized by the Railway Act to establish rates in excess of those provided in the Crowsnest Pass Act, and that the Crowsnest rates were applicable only to the mileage of 1897 and not to the mileage of 1925.

The history of the Crowsnest Pass agreement, with special reference to the recent decision of the Board of Railway Commissioners was again taken in review. The Supreme Court determined that the Crowsnest Pass Act was a "Special Act"⁵⁰, and as such was governed by the ordinary rule of construction, *generalia specialibus non derogant*, that is to say, it was an exception to any general act dealing with the same or similar subject matter. The Railway Act of 1903 was dissected and critically examined by the Court.

Passing to consideration of the second question : "Do the Crowsnest Pass rates apply exclusively to the designated traffic between points which were on the Canadian Pacific Railway Company's lines in 1897?", the Court held that the terms in which the rate reductions in clauses (d) and (e) were couched seemed to afford a conclusive answer in the affirmative⁵¹. After giving full consideration to the anti-discrimination clause of the Railway Act, the Court was of the opinion that the provisions of the Special Act and Agreement must prevail, and that

effect must be given to the plain and unmistakable terms in which clauses (d) and (e) are couched, notwithstanding inequality or unfairness that might result. In the case of the Crowsnest Act, the judgment continued, Parliament has provided that on certain lines of railway, rates and charges in respect of certain commodities shall not exceed specified maxima, and that discriminations so authorized by Parliament cannot be regarded as unjust or prohibited.

Recent Litigation and Legislation and the Position of the Crowsnest Pass Agreement Today

The application of the Crowsnest scale of rates in accordance with the decision handed down by the Supreme Court would have established chaotic conditions. It was obvious that something had to be done. Since the Board of Railway Commissioners' position was now clearly defined, and since that Board was inclined to make a downward revision on the Crowsnest basis, Parliament once again had to take the matter into its own hands.

The Government presented a bill¹¹ to amend the Railway Act of 1919, the purport of which was to widen the scope of the Railway Commission. The Crowsnest rates on all commodities mentioned in the agreement of 1897 were abolished, except those on grain and flour. This gave the Board unrestricted power, except in the matter of two commodities. Premier Mackenzie King reviewed once again the circumstances surrounding the creation of the Crowsnest Pass agreement and said that the government's programme had taken all those circumstances into consideration and had considered the effect of a complete removal of the agreement, and of the vast changes which had taken place in Canada during the years of its operation¹². The government desired, he said, to preserve the national sentiment and unity as much as possible. He felt that the Railway Commission should be the rate-fixing body of Canada, but should be directed by the government. The government, he added, was seeking by evolution to adjust the freight rates, realizing that special consideration should be given to the sentiment of the middle west regarding the Crowsnest Pass agreement, without injury to any other part of Canada.

Two accusations of unfairness on the part of the Board of Railway Commissioners were made during the course of the debate. T. L. Church said that the people had no confidence in the Board, which was nothing more or less than a political commission. T. W. Bird asked the House to take into consideration the fact that the West placed no confidence in a decision rendered by the Railway Commission. It was "an unpopular body", he claimed.

Two amendments, both proposed by the Progressive Party while the bill was in the committee stage, met with defeat. Robert Forke, Progressive Leader, moved that nothing in the bill should in any way affect pending litigation between the Government of Manitoba and the Canadian Northern Railway arising out of the agreement of 1902. This amendment the Government declined to accept on the ground that it would defeat the object of the bill and hamper the Railway Commission in its work. The bill was progressing slowly through the committee stage when the Hon. T. A. Crerar submitted a second amendment. It was, in effect, an instruction to the Board of Railway Commissioners that in the new freight rate schedule to be drawn up "rates in the territory lying west of Fort William and east of the Rockies shall not exceed by more than ten per cent. the rates fixed or approved for the same commodities lying east of Sudbury". It added a proviso that nothing in the amendment should be taken as an implication that rates in one district were to be higher than rates in any other.

The Hon. George P. Graham, Minister of Railways and Canals, declined to accept the amendment on the ground that it would involve giving additional preferential treatment to the west as compared with other parts of Canada⁶⁴. Mr. Graham himself had previously moved an amendment making it clear that the Crowsnest rates on grain and flour would apply to all traffic moving eastward over all lines of railway west of Fort William and Port Arthur⁶⁵.

Upon the bill becoming law⁶⁶, the powers of the Railway Board were widened in scope to allow it to exercise supervision over all rates except the Crowsnest rate on flour and grain.

On November 5, 1924, Chief Commissioner McKeown and Commissioner Oliver held a sitting of the Board in Vancouver to discuss purely local matters of a minor nature. The railway companies have since claimed that they did not consider it necessary to be represented by other than their local officials. Some time after the arrival of the Commissioners at Vancouver, there was added to the list of questions set down for hearing, "An application by the Government of British Columbia for an order reducing rates on grain, moving westward for export, to the same rates, proportioned as to distance as the same grain would carry if moving eastward for export."

The Railway Act states that unless otherwise provided, fifteen days' notice of hearing shall be given, but it also stipulates that the Board may direct a hearing upon shorter notice if it considers it necessary⁶⁷. No decision was rendered after the hearing had been completed.

On June 5, 1925, an order-in-council was promulgated⁵⁸ and advised:

"That the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to establishing a fair and reasonable rate structure, which will, under substantially similar conditions and circumstances be equal in its application to all persons and localities so as to permit the freest possible interchange of commodities between the various provinces and territories of the Dominion, and the expansion of its trade, both foreign and domestic, having due regard to the needs of agricultural and other basic industries and in particular to;

"(a) The claims asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

"(b) The encouragement of the movement of traffic through Canadian ports;

"(c) The increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal."

As a result of this order, the Board issued, a few days later⁵⁹ a circular asking Boards of Trade, provincial and municipal authorities, industrial and labour organizations and others interested to submit whatever claims they might have, particularly with reference to matters discussed in the order-in-council.

The purpose of this request was to put the Board in possession of all complaints against the existing rate structure which might be put forward for its consideration in the investigation, and to specifically direct the attention of the Board to the subject matter of such complaints. The Board also adopted a resolution stating that in carrying out the Government's order, "the matter of grain export rates via Pacific ports and other matters, if any, pertinent to the same investigation in which hearings may have been held but judgment not rendered, must of necessity be dealt with as part of the general investigation and under the judgment to be rendered in connection therewith."⁶⁰

The resolution was not concurred in by the two commissioners who had heard the British Columbia case in the previous year. Instead, they issued as an official pronouncement of the Board, a separate decision, dated September 2, 1925⁶¹. The ruling called upon the Canadian Pacific Railway Company and the Canadian National Railways to file tariffs, not later than September 15, reducing rates on grain and flour to Pacific ports

for export, to the same rates, proportioned as to distance, as grain and flour would carry if moving eastward for export.

In the course of his judgment, the Chief Commissioner said :

"If this application had not to do with grain and flour, "it would not seem necessary to dispose of it prior to a "report involving whatever changes are generally necessary, "but the grain business of Canada is of sufficient importance "to call for special legislation. Irrespective almost of the "cost of transportation, it is decreed that this national "asset must find its way to market, as far as railway carriage "is concerned, at a rate substantially lower than other "commodities bear. I do not think it can be contended "that such action is founded on a desire or intention to "aggrandise one part of the country at the expense of "another, but rather from the reason that the enormous "national value of the grain production of Canada justifies "such procedure."

In an interview granted to the press, Chief Commissioner McKeown said that notwithstanding the resolution adopted by Assistant Chief Commissioner McLean ⁶² the order would stand, inasmuch as it was approved by two commissioners sitting in the case. He held that the fact that a majority of the Board disagreed had no effect upon the order ⁶³. Commissioner Boyce took a contrary view, stating that the resolution approved by a majority of the Board prevailed over the judgment and order which had the approval of only two members. Chief Commissioner McKeown further justified his action on the ground that pending a general investigation, the Board could not consider itself prohibited from dealing with important cases as they came up.

British Columbia interests declared that the decision was "another long step forward in British Columbia's freight rate fight" ⁶⁴, and a "signal victory for the west". It was decided to request the Railway Board to sit in British Columbia to hear the representations of that province at the forthcoming general rate inquiry.

Taking of evidence in the general rate inquiry began in January 1926, but was not concluded until April 1927, making it the longest case ever dealt with by the Board of Railway Commissioners. On August 25, 1927, the Board issued an order, divided into five parts, which provided for the following ⁶⁵:

1. Granting the application of the provinces of Alberta and Saskatchewan through their counsel, S. B. Woods, K.C., and W. H. McEwen, respectively, to bring down the Canadian Pacific branch line rates to the level of the main line rates on grain and flour eastbound to Fort William, Port Arthur and

Westfort, and to apply those rates to all lines in the prairie provinces through equivalent mileage groupings.

2. Refusal to rescind the order of Chief Commissioner H. A. McKeown and Commissioner Frank Oliver, the effect of which was to remove the mountain differential on grain and flour westbound to Vancouver and Prince Rupert for export, and which has already been described.

3. Extending the provisions of the tariffs for the distribution of certain commodities in the prairie provinces as set out in the judgment in the Western Rates Case⁶⁶ so that they shall apply not only to the Canadian Pacific Railway lines, but also to those of the Canadian National Railways.

4. Meeting of the demand of the Quebec Harbour Commission and Board of Trade for a reduction from 34½ cents per hundred pounds to 18.34 cents per hundred pounds on all grain for export from Port Arthur, Fort William and Westfort and Armstrong, Ontario, to Quebec, over the National Transcontinental Railway.

5. Requiring the railways to give the same rate to Quebec as to Montreal on grain from Georgian Bay ports for export, and on all traffic from Toronto and west thereof for export.

In the course of the hearing of the general equalization case, the Maritime Provinces withdrew their application for a reduced rate on wheat over the National Transcontinental Railway to Saint John and Halifax to encourage the winter movement of western wheat through their ports. In withdrawing their application, they associated themselves largely with the representations made on behalf of Quebec.

The history of the Crowsnest Pass Act has now been traced for a period of thirty years through Parliament, Committees of Parliament, Governors-General-in-Council, the Board of Railway Commissioners, and the Supreme Court of Canada. Neglecting the period of its temporary suspension during the years immediately following the war of 1914-1918, the Act remained intact until 1926, although conditions at the time at which the Act was passed were altogether different from those of today. In 1926 the Act was altered so as to leave only that part dealing with grain and flour rates beyond the jurisdiction of the Board. In 1927, as just described, the Crowsnest rates on grain and flour became the basis of rates for all export grain movements in the Dominion.

With the legal position of the Crowsnest Pass Act now definitely established it is necessary to examine closely its economic aspects, and their bearing upon trade and commerce generally. Before dealing with this important phase of the question, however, a brief outline of some of the changes that have taken place in the Canadian West during the time under

consideration as well as the changes in the cost of railway maintenance and operation during the three decades under consideration is essential.

¹⁷ *B.R.C.*, 411 *et seq.*

¹⁸ *Ibid.*, 417.

¹⁹ The following figures were presented :

	Gross Earnings	Net Earnings	Operating Ratio
1913.....	\$256,702,703	\$74,691,012	70.9%
1914.....	243,083,539	64,108,280	73.6
1915.....	199,843,072	52,111,972	73.9
1916.....	261,888,657	81,346,394	68.9%
Average per year.	<u>\$240,379,492</u>	<u>\$68,064,414</u>	<u>71.8%</u>
	*\$ 21,509,165	†\$13,064,414	‡2.9

*Increase for 1916 over average ; † Increase ; ‡ Decrease for 1916.

²⁰ Isaac Pitblado, K.C.

²¹ These rates are set out *in extenso* in 7, *B. R. C.* at p. 425.

²² *Supra*: pp. 11-18, *Regina Rates Case*.

²³ Assistant Chief Commissioner, Deputy Chief Commissioner and Commissioners Goodeve and McLean concurring.

²⁴ 7 *B.R.C.* at p. 433.

²⁵ *Ibid.*, p. 435.

²⁶ 8 *B.R.C.* 277, at p. 280.

²⁷ Order-in-Council, No. P.C. 1768, reading :

"The Committee of the Privy Council have before them a memorandum dated 15th July, 1918, from the Minister of Railways and Canals, stating that representations have been made by the organization of Railway Employees for an increase in the scale of railway wages of the employees engaged on the Intercolonial Railway, Transcontinental Railway and Prince Edward Island Railway, and that similar demands have been made on other railways in Canada. That the attached letter from the Chairman of the Railway Commission has been received by the Acting Premier, and referred by him to the Minister of Railways and Canals, from which letter it appears that the extra amount of wages which the three larger systems, that is to say, Canadian Pacific, Grand Trunk and Canadian Northern, would be called upon to pay, should the same rate of wages to be adopted in Canada as is now in force in the United States, amounts to the sum of \$36,863,494, while on Government lines the increase would amount to \$5,600,000, and it further appears that the Railway Companies are of the view that the wages paid railway employees in Canada ought to be the same as that adopted in corresponding territories in the United States, as the class of work is the same in both countries. That there is a large interchange of traffic, and that, as a result, many employees work in both countries ; and on the further grounds that different organizations are international in their scope, and that heretofore the wage scale in both countries have been relatively the same.

"That in view of the increased cost of living, wages in Canadian territory should be increased as increased in American territory, by the award commonly known as the "McAdoo" award, as the same may be from time to time extended or amended, in so far as the Government Railway Systems are concerned, and that it is advisable in the public interest that companies, privately owned, should make similar increases to their employees.

"That the net earnings of the railway systems as a result, of the increased costs of transportation, which have already accrued, have greatly decreased. That the net earnings of the Grand Trunk in 1917 decreased to £26,279, as against £1,202,281 in 1916, and the deficit of the Canadian Northern largely increased, while the Canadian Pacific net earnings in the first six months of

the present year decreased some \$7,000,000, while the increased scale of wages as contemplated will cost that company alone \$15,000,000 over and above its present costs. That in order to enable the railways of Canada to meet the increased wage charges which they will be obliged to pay by reason of the increases hereinbefore referred to, the Minister of Railways and Canals believes that similar action ought to be taken in Canada as taken under similar circumstances in the United States, and freight rates be raised in Canada as such rates have been raised in adjacent United States territory.

"The Minister recommends under authority of the War Measures Act :

"(1) That the scale of wages of railway employees as fixed by the "McAdoo" award in United States territory, including any amendments or extensions thereof, be applied to in Canadian territory in so far as all lines of railway owned, operated or controlled by the Government are concerned. (2) That the wage scales of privately owned railway companies in Canada should be similarly advanced. (3) That increases be made in the freight rates of all Canadian carriers, subject to the jurisdiction of Parliament, as have been made in the rates of American carriers by the Interstate Commerce Commission, and under order of the Director General of Railway Administration of the United States. (4) That on the acceptance by the Canadian Pacific, Grand Trunk, Canadian Northern and other railway companies of the said "McAdoo" schedule, the Board of Railway Commissioners be required forthwith to prepare a schedule of rates which will grant similar increases in freight rates in Canada to the increases already granted in American territory, effective as of August 1, 1918."

¹³ 8, *B.R.C.*, 277, at p. 290.

¹⁴ The first section of this Order in Council reads :

"His Excellency the Governor-General-in-Council, on the recommendation of the Minister of Railways and Canals, made on the recommendation of the Board of Railway Commissioners, and under the authority of the War Measures Act, 1914, is pleased to order and enact and it is hereby ordered and enacted as follows :

"1. Notwithstanding the provisions of any legislation heretofore passed, or of any rate-limiting agreement heretofore made, the charges for the carriage of freight on all railways owned, operated or controlled by the Government of Canada and all other railways subject to the jurisdiction of the Parliament of Canada, shall be increased to the extent and in the manner hereinafter set out, that is to say :—"

¹⁵ The rates are set out in 8, *B.R.C.*, pp. 290-295.

¹⁶ *Supra*.

¹⁷ *Monetary Times Annual*, Jan. 1923, p. 166.

¹⁸ *Hans.*, 1922, p. 1402. The motion read :

"That notwithstanding that the regulation of railway rates is a matter within the jurisdiction of the Board of Railway Commissioners, it is advisable that a Select Special Committee be appointed to make inquiry into the question of railway transportation costs, it having been disclosed by recent conferences held between the Government and the chief executives of the various railways with respect to the reduction of freight rates that the representatives of the railways deem it inadvisable immediately to reduce the rates of basic commodities because of the expiration on July 6th, 1922, of the suspension of the Crowsnest Pass agreement.

"That, in the circumstances, it is advisable to afford opportunity to all interested parties to submit their views upon the subject matter of the inquiry to the said committee with particular regard to the effect of the rates established by the Crowsnest Pass Agreement upon Canadian National Railways and other lines, as well as upon agricultural development and Canadian industry generally.

"And that the said committee shall have power to send for persons, papers, and records, including the minutes of evidence taken before the

committee of this house in previous sessions, to examine witnesses under oath and to report from time to time."

¹⁹ *Ibid.*, p. 1403.

²⁰ *Hans.*, 1922, p. 1404.

²¹ *Ibid.*, 1427 *et seq.*

²² *Ibid.*, 1439. The amendment read : "That a general reduction in railway rates, so essential to the welfare of Canadian production and trade cannot, as declared by the Government, be made until Parliament decides whether or not the Crowsnest Pass agreement which expires on July 6th be renewed ; that it is the immediate duty of the government—already too long deferred—to acquire the necessary information gathered and in their disposal at the hands of the Board of Railway Commissioners and to submit its policy to the house."

²³ The evidence was printed from day to day and appears in fifteen sections.

²⁴ 15-16 George V, c. 52.

²⁵ *Sess. Pap.* No. 226.

²⁶ By Order-in-Council.

²⁷ Oliver, C., dissenting.

²⁸ 13 *B.R.C.*, 173 at p. 183.

²⁹ *Ibid.*, 185.

³⁰ *Ibid.*, p. 179.

³¹ *Ibid.*, p. 182.

³² *Ibid.*, p. 183.

³³ *Supra*, p. 23.

³⁴ Representing the railway companies : Eugene Lafleur, K.C., E. P. Flintoft and W. B. Lanigan, for the C.P.R.; W. C. Chisolm, K.C., and Frank Watson, for the C.N.R.; and for the provinces of Manitoba, Saskatchewan and Alberta, H. J. Symington, K.C.

³⁵ Present at the hearing : Special Committee of Parliament.

³⁶ *Supra*, p. 23.

³⁷ *The Monetary Times Annual*, Jan. 9, 1925, p. 155.

³⁸ *Ibid.*

³⁹ McLean, A.C.C., and Oliver, C., dissenting.

⁴⁰ 14, *B.R.C.*, 147 at pp. 173-4.

⁴¹ C.P.R. Tariffs, C.R.C. No. E-4137 and C.R.C. No. W-2757; C.N. Tariffs, C.R.C. No. E-765 and C.R.C. No. W-391, all issued in accordance with the strict interpretation of the Crowsnest Act.

⁴² 14, *B.R.C.*, p. 154.

⁴³ *Ibid.*

⁴⁴ The Fifteen Per Cent. Case, 1917.

⁴⁵ *Ibid.*, p. 169. The statement is by Jessel, M.R., in *ex parte* Corbett, 14, *Ch. Div.*, 122. In the East and West India Dock Company and Hill, 9, A.C., p. 453, Earl Cairns says : "While there are two constructions, the one of which will do, as it seems to me, great and unnecessary injustice, and the other of which will avoid that injustice, and will keep within the purpose for which the statute was passed, it is the bounden duty of the court to adopt the second and not the first of those constructions."

⁴⁶ McKeown, C.C., at p. 177, said : "Under legislation enacted subsequent to the passage of the Crowsnest Pass Railway Act and the making of the agreement under it, this Board has been vested with full power to fix, determine and enforce rates then exercisable by the party of the first part to such agreement—subject to appeal, and I think the Board has the necessary jurisdiction and should proceed to consider the subject matter of all these complaints with a view to removing existing discrimination and giving necessary relief, unhampered by the agreement entered into under the provisions of the Crowsnest Pass Railway Act and the order made hereinunder is, in my opinion, the first step in that direction."

⁴⁷ 14, *B.R.C.*, p. 193, General Order No. 408, File 32812.1.

- ⁴⁸ *Ibid.*, p. 192.
- ⁴⁹ 15, George V. *Sess.*, *Paper* No. 100.
- ⁵⁰ *Ibid.*, p. 12.
- ⁵¹ *Vide* Appendix.
- ⁵² Bill No. 181.
- ⁵³ *Hans.*, 1925, pp. 4305 to 4486.
- ⁵⁴ *Ibid.*
- ⁵⁵ *Ibid.*
- ⁵⁶ 15-16, George V. c. 52.
- ⁵⁷ Sec. 57.
- ⁵⁸ No. P.C. 886.
- ⁵⁹ July 9, 1925.
- ⁶⁰ Issued Sept. 2, 1925.
- ⁶¹ 15, *B.R.C.*, p. 269.
- ⁶² *Supra*, p. 38, assented to by Boyce and Laurence, C. C.
- ⁶³ Reported in *The Gazette* (late edition), Sept. 3, 1925, by Canadian Press.
- ⁶⁴ Premier Oliver, in an interview with Canadian Press.
- ⁶⁵ 17, *B.R.C.*, 131, at p. 295.
- ⁶⁶ *Supra*, p. 18-19.

CHAPTER IV

CERTAIN ECONOMIC AND POLITICAL CHANGES IN CANADA, 1897-1927

Railway Construction—Labour and Operating Conditions—Commodities
Handled by Railways—The Progressive Party

Railway Construction

On June 30, 1898, there were 16,717 miles of railway in operation in the whole Dominion of Canada, and 16,870 miles of track laid¹. In that year the percentage of Canadian railways' net income to capital was 5.44 as compared with 4.67 per cent. the year previous. The increase is accounted for by the disproportionate rise in gross operating revenues as compared with general operating expenses.

One year previous, the Canadian Pacific Railway Company operated a total of 7,300 miles, and their earnings on these operations were 1.82 cents per passenger mile and 0.78 cents per ton mile. For the year ended December 31, 1899, the company had in operation 7,733 miles, and the passenger and ton mile earnings for that year were 1.79 cents and .74 cents respectively.

On December 31, 1924, there were 40,061 miles of railway in operation in Canada², having outstanding stocks valued at \$1,401,263,285 and funded debts of \$2,012,602,828³. Of the mileage in operation in 1898, 4,281 miles were in what are now the three prairie provinces and British Columbia⁴. The 1924 mileage in the four western provinces was 20,255. A comparison of figures shows that the increase of railway mileage in the four western provinces has been twice as great as that in the eastern section of the country.

Labour and Operating Conditions

Labour conditions, particularly as regards wages, have also changed considerably since the time the Crowsnest Pass Act was passed. Railway employees are divided into different classes; train service, maintenance of way, mechanical shops, etc. It is unnecessary to describe all the changes in wage-scales that have been brought into effect, but it is important to note that, generally speaking, wages in 1926 as compared with 1898 were 125 per cent. higher in the first group, 200 per cent. higher in the second group and nearly 300 per cent. higher in the third group⁵.

A comparison of the costs of principal commodities entering into railway operations over the same period shows increases varying from 60 per cent. increase for track spikes to 158 per cent. increase for fuel⁸.

The operating ratios and dividend rate of the Canadian Pacific Railway for certain years between 1897 and 1927 were as follows:

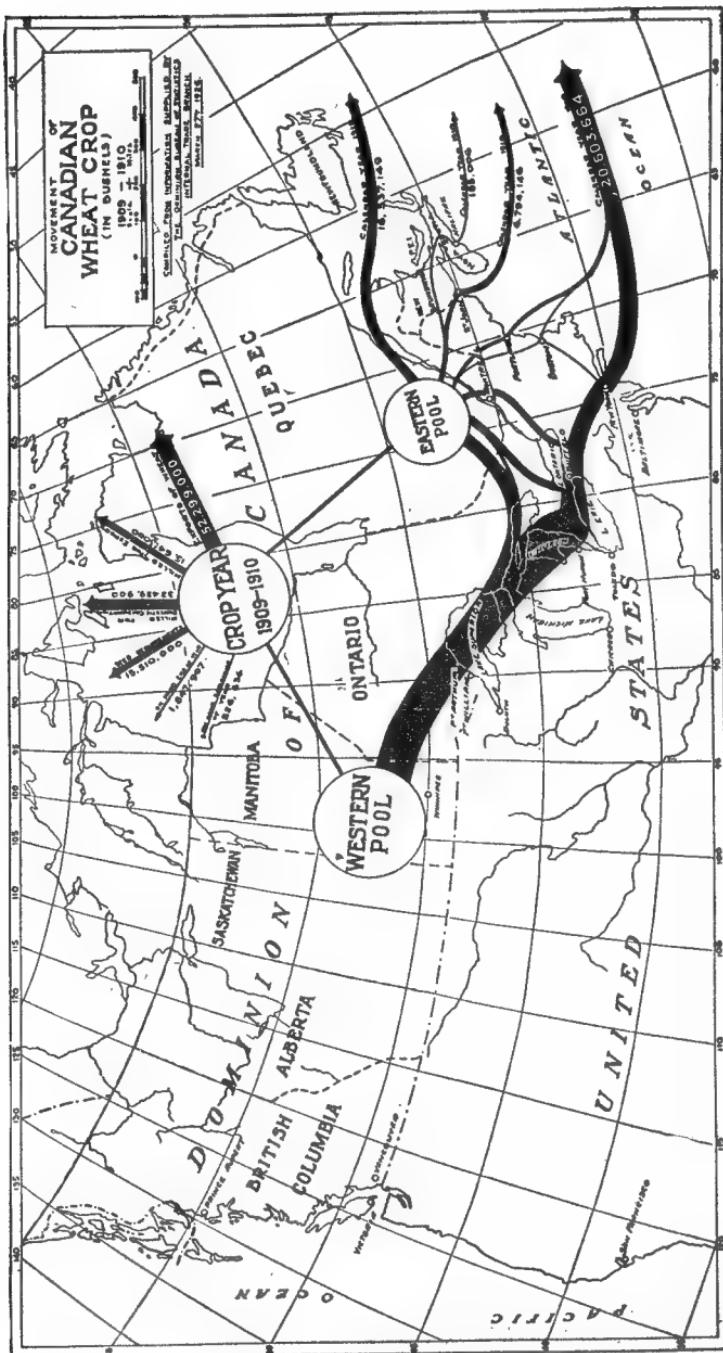
		Operating Ratio	Dividend Rate
.....	1897	57.16%	4%
Crowsnest	1898	59.92	4.0
Manitoba Agreement	1901	60.75	5.0
	1902	62.44	5.0
Railway Commission	1903	63.97	5.5
Regina Case	1910	64.38	7.5
	1911	64.77	8.5
Western Case	1914	67.32	10.0
Eastern Case	1917	69.46	10.0
Rate Increase	1918	78.10	10.0
Rate Increase	1919	81.39	10.0
Crowsnest Grain Rates	1922	80.55	10.0

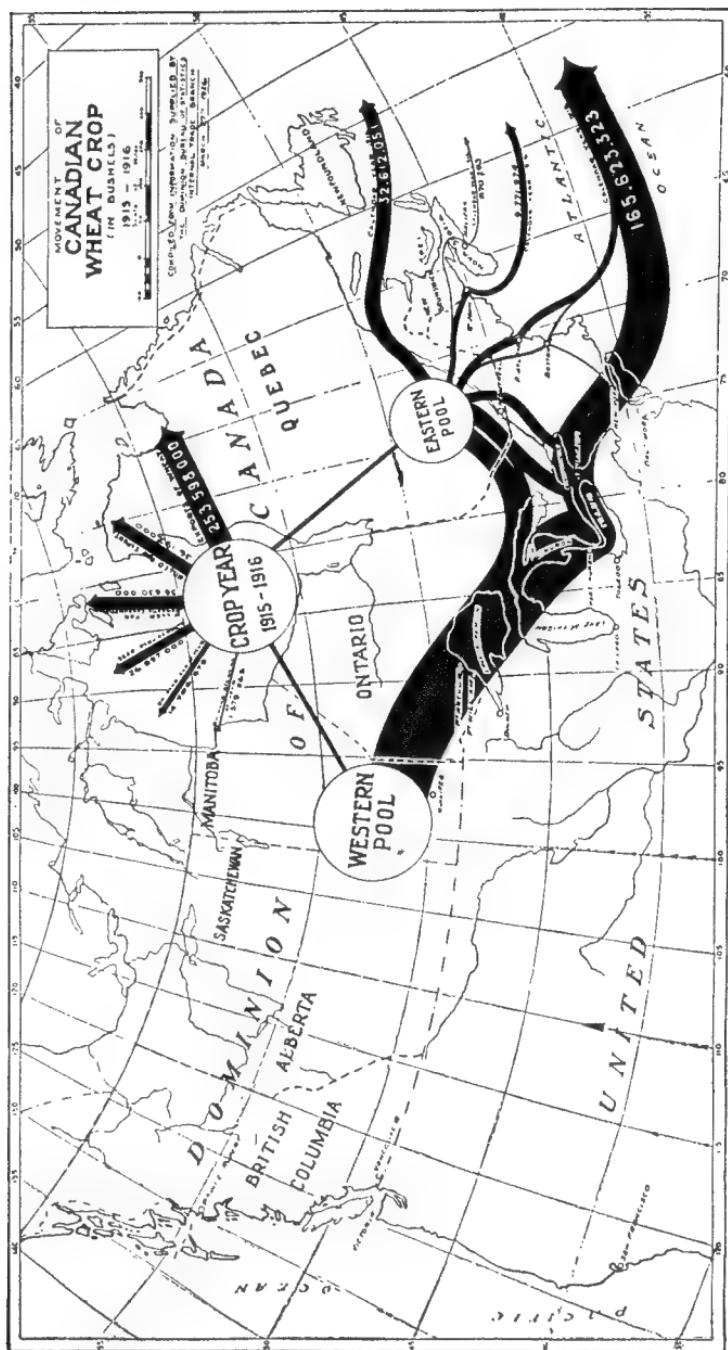
The years cited above have not been selected with a view to providing any connection between the passage of new legislation and the rising operating ratio, but merely because of their importance in Canadian freight rate history.

Commodities Handled by Railways

The rapid development of the Canadian West since 1897 brought to the Canadian Pacific Railway a phenomenal increase in traffic from that part of the country, grain being the chief commodity carried. Principal articles of freight carried in 1897 by Canadian railways totalled 20,300,331 tons, of which 3,184,339 tons were grain; 1,191,564 tons flour, and 3,471,195 tons manufactured articles. This compared with a total weight of 24,266,825 tons the year previous⁹.

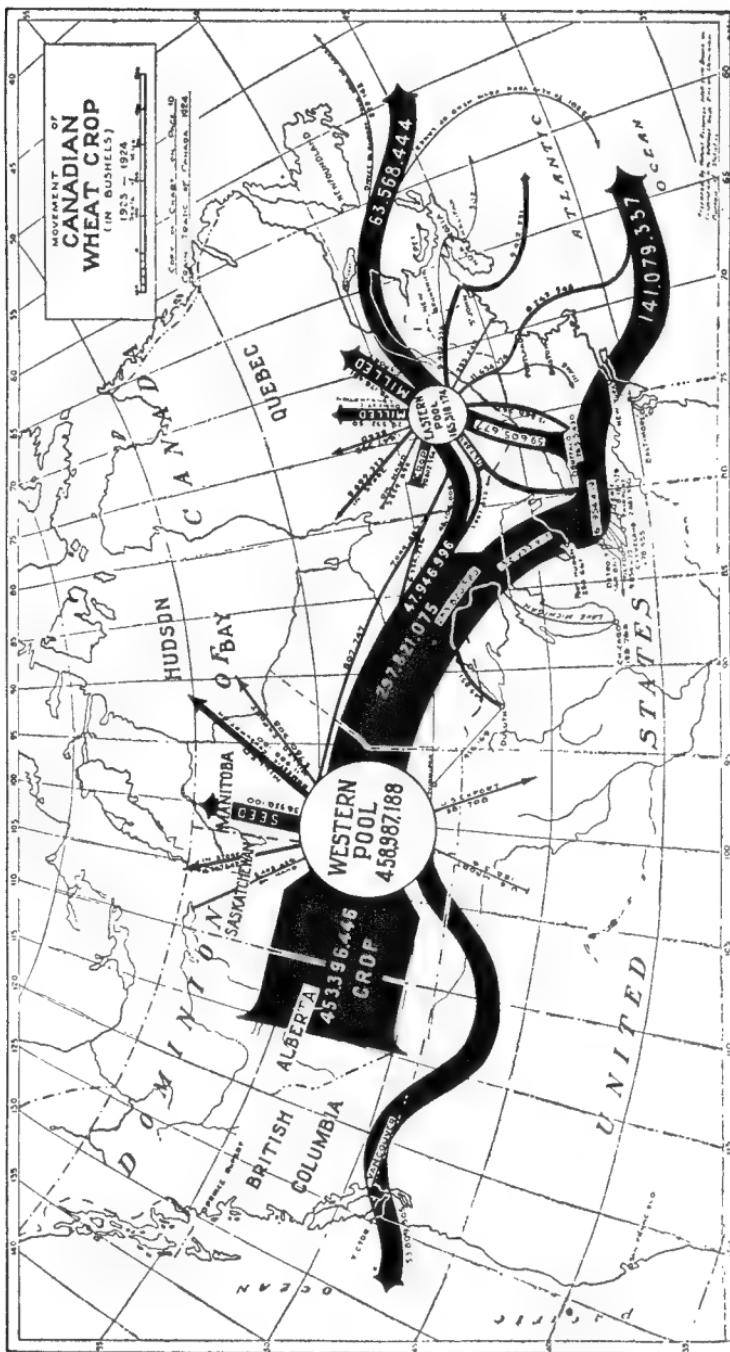
The quantity of barley, buckwheat, corn, oats, rye, and wheat landed in Montreal via the Grand Trunk and Canadian Pacific Railways in 1896 was 153,717 tons, while the quantity of the same articles passed down the whole length of the St. Lawrence Canals, to Montreal, for the same year was 495,898 tons⁹. Of the 3,184,339 tons of grain carried by Canadian railways in 1897, 808,364 tons were carried by the Canadian Pacific Railway Company and its leased lines, while the Grand Trunk Railway System handled 1,094,333 tons. The amount of flour carried, in tons, by the two principal railways in the same year compared: Canadian Pacific Railway, 306,101 tons; Grand Trunk System, 418,065 tons.





THE CROWNSNET PASS AGREEMENT

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In 1897 Ontario was the greatest grain producing province of the Dominion. During that year, grain production in Manitoba and the Northwest Territories produced 41,505,706 bushels of grain, while Ontario produced 150,568,064 bushels. The disposition of Canadian grain-producing lands and of Canadian railways in 1897 explains how it was that at that time the Grand Trunk System handled considerably more grain traffic than the Canadian Pacific.

The wheat crop of 1923 marketed in the western division during the crop year from Sept. 1, 1923, to August 31, 1924, amounted to 453.3 million bushels. Out of 363 million bushels which were commercially disposed of, the shipments to the eastern division of 140.7 million bushels and the direct export to Great Britain of 153.1 million bushels were the chief items. The all-rail movement eastward from the western division was 7.0 million bushels. Lake shipments from Fort William and Port Arthur were 283.6 million bushels, of which 132.8 million bushels went through Canadian ports and 150.6 million to United States ports. The export of wheat through Vancouver was 53.8 million bushels as compared with 17.8 million bushels the previous year¹⁰. The accompanying charts illustrate the grain movement over a period of years.

The growth of the prairie provinces, and the development of British Columbia, as well as the opening up of the Panama Canal brought about other changes in Canadian traffic conditions. When the Crowsnest Act came into force the general source of supply of green and fresh fruit for the Prairie Provinces was Eastern Canada. Tropical fruits, such as oranges and lemons, especially the latter, were imported from Mediterranean ports via Montreal, and came in by way of the southern junctions from California, via St. Paul. In 1897 British Columbia was not a source of supply.

In 1890 coal oil was an important commodity for the Canadian farmer of the west, and the source of supply was eastern Canada, by direct rail. Subsequently, storage tanks were erected at Fort William, supplied by tank vessels, and reshipments by rail to western destinations took place. The carriage of oil from eastern Canada has since become of comparatively little importance due to the discoveries in the American West and to the fact that refineries have been established at suitable points in western Canada. At the time of the passage of the Crowsnest Act, coal oil was in considerable demand for illumination purposes, but with the extension of electricity, the demands of the northwest farmer are now for gasoline, lubricants, and fuel oil.

As in 1897, eastern Canada and the United States are the chief sources of cordage and binder twine for western Canada.

This commodity was, and still is brought up by water to the head of the lakes where it is transferred for rail shipment to its destination. The Canadian farmer uses an average of $1\frac{3}{4}$ lbs. of binder twine per acre.

As regards agricultural implements, the situation has changed little since 1897. Most shipments at that time came forward all-rail, and due in a large measure to the protective tariff at present in force, the same conditions obtain today. Iron articles, wire, window glass, woodenware, and household furniture were supplied entirely from eastern Canada in 1897, and the greater part of these commodities still comes from the same source. Though paints and oils were also supplied from the east in the late nineteenth century, this is no longer the case, as paints are now manufactured at St. Boniface, Winnipeg and Victoria. Linseed oil mills have been established at St. Boniface and Medicine Hat. Western oil mills now supply a number of eastern paint makers, so that there has been a virtual reversal of routing in these commodities. The amount of paper, building and roofing materials supplied by the east to western Canada, while still important, is considerably less in amount than in 1897. When the Act came into force, the movement of livestock was from the east and consisted of feeders and breeders. Shipments are now made from west to east¹⁰.

The Progressive Party

Another fact, of which sight must not be lost, is the great increase in political power of the Progressive Party. In that it represents one section of the country, the grain growing west, and that section only, the stand it would take in such a question as that of the Crowsnest Pass Agreement will be readily understood.

The survey of changing conditions presented above makes no pretense of being exhaustive. Of the many changes that have taken place, only a few have been selected to illustrate the development of the Canadian West. A full understanding of present day conditions in the west as compared with those of 1897 is none the less of greatest importance to the complete analysis of the economic aspects of the Crowsnest Pass Agreement as it stands today.

¹ *Canada : Statistical Record, 1898*, p. 319.

² *Canada Year Book, 1925*, p. 592.

³ *Ibid.*

⁴ *Canada : Statistical Record, 1898*, p. 319.

⁵ Compiled from list of figures submitted as evidence by E. W. Beatty before the Special Committee to Consider Transportation Costs, 1922.

⁶ *Ibid.*

⁷ Compiled from C.P.R. reports.

⁸ *Canada : Statistical Record, 1898*, p. 327.

⁹ *Ibid.*

¹⁰ From memorandum submitted by the Canadian National and Canadian Pacific Railway Companies to the Government, March, 1924.

CHAPTER V

THE ECONOMIC ASPECT OF THE CROWSNEST AGREEMENT

Transportation Conditions in Canada—Effect of the Crowsnest Act on Rate Structure—The Prairie Provinces and the Crowsnest Rate

Transportation Conditions in Canada

Geography has always had a very distinct influence on the structure of Canadian freight rates and a complete understanding of the economic problems at present surrounding grain and flour rates, which are based upon the Crowsnest Pass Act of 1897, is impossible without careful consideration of the conditions surrounding transportation in different parts of Canada.

The geographic conditions which must be considered are :

- (a) Mountain conditions in British Columbia.
- (b) Open prairie country from the head of the lakes to the Rockies.
- (c) Water routes in eastern Canada.
- (d) International boundary to the south.
- (e) Water route via the Panama Canal.

In reviewing railway transportation and operating conditions in Western Canada from what may be called the practical standpoint, it is apparent that train movement is more difficult and consequently more expensive in the mountain area, that is, in the section of the country lying west of Canmore, than it is on the prairies. Generally speaking, it is possible in the prairies, for a locomotive and crew to start out from the terminal with the maximum tonnage that the locomotive can pull over the controlling grade, and to proceed to the objective terminal without any change in tonnage of the train. The area over which these conditions are generally held to obtain is that lying between Calgary and Fort William¹.

In the mountains, the grades on the Canadian Pacific Railway are not only heavy but numerous. The Canadian National Railways were built around the mountains instead of through them, and consequently, on these lines the mileage between the prairie points and the Pacific Coast is sometimes considerably greater, though steep grades have been avoided.

The comparative frequency as well as the steepness of the mountain grades on the Canadian Pacific lines are responsible for many extra train movements, assisting engines, setting out and picking up cars, and smaller tonnage per train. The com-

bination of these two factors results in heavier costs for mountain operation than in level country.

The amount of expense in British Columbia is said to be aggravated because in every case where a turn-round train is moved over a portion of a subdivision, the crew under working rules, receive a full day's wages, that is wages for one hundred miles, though they may travel only fifty. In this way, it is claimed, another additional arbitrary expense is created, over which operating officers have no control. Besides the extra wage costs and the smaller average size of trains, it is contended by the railways that fuel consumption is proportionately higher in British Columbia than in what is generally described as "level territory".

The railways have also advanced figures to show that the expense of clearing snow is as great in the mountain area as it is in the prairies, and they point out that a further operating difficulty which is frequently encountered in the mountains is washouts, which, it is claimed, are likely to occur at any time, and are due not only to the spring freshets, but also to heavy rainfalls.

According to the figures of the Superintendent of the Canadian Pacific Railway Company, the cost of maintaining bridges, trestles, culverts, etc., per mile of road on the Prairie Divisions in 1925 was \$37.48, and in British Columbia it was \$118.37.

The Canadian National Railways also submitted that maintenance of way and structure costs were heavier in British Columbia than on the prairies; that operating costs were also heavier and that the cost of moving grain westbound to Vancouver over the Canadian National System is as much heavier as the total operating costs of two and one-half trains, and that in respect of grain movement the empty haul was practically 100 per cent.¹ A computation based on a per mile of line basis, showed that it cost 35.6 per cent. more in British Columbia to maintain the railways' ways and structures, in so far as fixed maintenance was concerned than on the prairies². It was stated that on the prairies in 1924 the Canadian National handled 668 net tons in a train a distance of one mile at a cost of \$4.04, while in British Columbia it hauled 600 net tons in a train at a cost for one mile of \$4.31³.

By reason of the conditions above described, the railways find it necessary to employ 3.3 men per mile of line in the mountain area as compared with 2.7 in the prairie regions. Greater expenses in the matter of fire fighting are also claimed. It was also adduced from evidence presented to the Board of Railway Commissioners that the wear and tear of equipment operating in a mountain district is heavier than in level country because of greater frequency of grades and curves which necessitates far

greater use of brakes. Heavier expense results for brake shoes, tire replacement and track maintenance, besides the general stress upon rolling stock.

On account of the additional train movements which are required to handle a given tonnage through the mountains, and the other conditions which have been described, it is necessary to exercise closer supervision. In the mountains a divisional organization is unable to supervise nearly so great a stretch of mileage as on the prairies. The Vancouver division (C.P.R.) consists of 268.6 miles, and the Revelstoke Division 332.9 miles, or a total for the two divisions of 601.5 miles. Each divisional organization is complete with Superintendent, trainmaster, despatching office, and miscellaneous staff. A prairie division runs from 700 to 800 miles, sometimes more, as in the case of the Saskatoon Division with 1,000 miles.

So far as actual train movements are concerned, conditions on the prairies seem much more favourable than in British Columbia. There were formerly three difficulties in the way of operation through the prairies, but the railways claim that two of these have been considerably minimized. Generally speaking, the railways have to contend with more severe weather conditions on the prairies than they do on the mountains, though there have been winters in which more extreme cold was felt in parts of the latter area.

The other two difficulties referred to are heavy snowfall and lack of water supply. The former difficulty has been considerably minimized by the use of more and superior snow-fighting equipment, and by the erection of snow fences. It is necessary to keep in sight, however, the fact that the latter method of protection is rather expensive. Water difficulties have been overcome to a certain extent by the construction of dams and the provision of pipe-lines to fairly pure and reliable sources and by the use of larger tenders. Certain expense is involved in these operations and also in the fact that locomotive boilers require to be washed out more frequently than in entirely "pure water" districts.

As far as concerns prairie traffic, another difficulty is the fact that during about eight months of the year, tonnage on many of the branch lines is comparatively negligible, and while train service is reduced to a minimum, it is necessary to maintain track and other forces.

The railways contend that a fair comparison cannot be issued between rail rates in eastern and western Canada since rates in the former section are "compelled" by three competitive conditions, namely : water competition, American railway competition, and motor competition.

It is hardly necessary to describe the chain of waterways from the head of the Great Lakes to the Atlantic Ocean, including tributary rivers and canals, and the waterways of the Maritime Provinces. Practically all of the most important shipping points in Eastern Canada are within convenient distance of water communication. As a result of the increased movement by water, the greater elevator capacity, the winter storage of grain in steamers at the eastern lake ports and also at Montreal, there has, during the last ten years, been a marked decrease in the all-rail movement of grain from the Fort William and Port Arthur elevators.

Eastern Canada is served by a network of railways having a large number of junction points with American lines all along the international boundary from Sault Ste. Marie on the west, to Vanceboro, Maine, on the east. The number of such connections is much greater in the east than in the west, and, in so far as transportation and freight rates are concerned, the international boundary is non-existent. In fact, the tariffs via the various competitive routes have been so adjusted as to permit the freest possible movement of commodities via all gateways⁶.

Motor competition has been increasing rapidly in Quebec and southern Ontario, more especially in the latter area, and a regular tonnage is available between the large centres where the highways have been improved.

The Board of Railway Commissioners has dealt with these conditions upon several occasions since its inception, notably in the Western Rates Case, and generally speaking, it has never seriously challenged their compelling effect upon the rate structure of Eastern Canada.

One other factor remains to be considered, namely : traffic via the Panama Canal. This canal was opened to commercial traffic in August 1914, but it was of little importance to Canada until 1921, since which time it has grown in significance. It has been shown that a steadily expanding business is being done at Vancouver as a result of the opening up of this canal, the following figures having been submitted to the Board of Railway Commissioners⁷.

	Tons
1921.....	43,666
1922.....	64,455
1923.....	123,905
1924.....	150,317
1925.....	178,547
1926.....	216,800

An increase of 21 per cent. over the year previous will be observed in 1926.

An examination of all the figures submitted in connection with Panama Canal traffic demonstrates that a considerable amount of traffic that undoubtedly would have been carried by rail to the Atlantic seaboard, now moves to its destination via the Pacific Coast.

The Effect of the Crowsnest Act on Rate Structure

The study of the economic problems that surround the Crowsnest Pass Agreement is facilitated by an examination of the consequences of its reinstatement in 1922 upon Canadian freight rate structure. These are best dealt with in geographic rather than in strictly chronological order, and the chief sections to be considered are :

- (1) The Maritimes.
- (2) British Columbia and Alberta.
- (3) The Port of Montreal and the City of Winnipeg.

(1) *The Maritimes*.

It has always been claimed by those who opposed the Crowsnest scale because it is a statutory rate that the statute of 1897, granting special protection to the grain-growing west would give rise to demands by other sections of the country for statutory rates protecting them. That which they feared would happen actually did.

In 1926 the Maritime Provinces presented a submission of their claims with respect to Maritime disabilities within Confederation. A large part of this document is concerned with railway and freight rates, and touches to some extent upon the Crowsnest Pass rates agreement.

The Province of Nova Scotia claimed that the effect of Parliamentary interference in rate-making and railroad operation in Canada during the few years just past had been far from favourable to the shippers of Nova Scotia, and had created a precedent by reason of the legislation of 1925, that might have far-reaching effects. Having due regard to the nature of the legislation, they declared that there was now every right for any large political group to demand and receive for their constituents, the basis of rates they enjoyed in 1897. The precedent, they said, had already been written on the statute books of the Dominion in no uncertain language⁷.

The effect of the reinstatement of the Crowsnest rates on grain, the Maritime Provinces claim, has eliminated the all-rail route on grain as a competitor of the lake-and-rail and all-water routes. Thus, Halifax has been eliminated from the all-rail movement. Referring again to the reinstatement of the Crowsnest rates, Nova Scotia submitted that the element of

competition as between the Canadian and United States railways in rate-making on grain does not become effective until the grain has reached Fort William and Port Arthur on the Canadian side and Duluth on the American side. By reason of the forcing of the Crowsnest rates into effect west of Fort William, the carriers had been unable to grant any reductions on the rates from Fort William east that would reinstate the all-rail route as a serious competitor of the lake-and-rail and all-water routes.

Though the suggestion advanced by Nova Scotia that it be accorded statutory protection for the rates it enjoyed in 1897 seems to be particularly poorly founded since it would involve making a contract that would be retroactive for 30 years, in view of the precedent established by the Crowsnest Act, their argument that they are entitled to some sort of statutory protection does not seem to be entirely groundless. Leaving aside for the moment any consideration of the value of statutory rates as such, it seems reasonable that if one part of the country for good and sufficient reasons enjoys statutory protection, other sections of the same country, for reasons equally good and sufficient, are likewise entitled to statutory protection. This argument, however, is strictly political and not economic.

The particular statutory protection wanted by the Province of Nova Scotia would presumably be that which would cause a certain amount of grain to be carried over the all-rail route, with Halifax as a point of export. That is to say, an artificially created rate designed to benefit Nova Scotia as an export point. It will be recalled that in the General Rate Inquiry the Maritimes did present this claim, finally abandoning it, and joining with the City of Quebec in the demand for lower rates to that port from Fort William over the National Transcontinental line. The request was granted. Whether or not the reductions so granted are likely to mean anything in actual practice, is in and of itself a question requiring considerable treatment, but for the purpose of this discussion, attention must be focussed only upon its bearing on the Crowsnest Agreement.

It is upon that agreement that the claim was founded, and in granting the claim the Board of Railway Commissioners has to some extent extended the meaning of the Crowsnest Act. The Board has several times pointed out, that the Crowsnest Act, being designed to grant special concessions to one section of the community was not to be taken as a basis of rate making in another, yet this principle seems to have been overlooked to some extent in the granting of the reduction from Fort William to Quebec City.

The effects of the reinstatement of the Crowsnest rate on grain upon the Maritime Provinces has only been touched upon

lightly, but from the few details presented, it can be seen that the statute of 1897 could conceivably cause several complications.

(2) *British Columbia and Alberta*

When the Crowsnest Pass Act was passed in 1897, British Columbia and Alberta were districts of little importance⁸, hence the fact that that Act provided for reductions in grain rates from the prairies eastbound, and not westbound as well gave no cause for complaint. But with the growth in importance of Vancouver as a shipping point, especially since 1921, and the rise of Alberta as a grain growing area, the Crowsnest Pass agreement took on an entirely different aspect.

In 1922, when the Special Parliamentary Committee to Consider Transportation Costs met, the Province of British Columbia represented by G. G. McGeer, protested vigorously against the restoration of the Crowsnest rates, since their scope did not include British Columbia.

The railways, as well as being generally opposed to the restoration of the Crowsnest Pass agreement for two reasons, namely; that statutory rates are objectionable and that the rates as such were insufficient in the face of prevailing conditions, were specifically opposed to its extension to British Columbia, basing their arguments on greater costs of maintenance already described. Answering this contention, the British Columbia interests admitted that as far as the Canadian Pacific Railway was concerned, and to a greatly lesser extent also in connection with the Canadian National Railways, operating costs in British Columbia actually were higher. They admitted also that rates in the east were "compelled" by water and American rail competition⁹. Notwithstanding these facts, however, they held that British Columbia was entitled to the same rates as the prairies because rates in the latter district had no relation to operating costs and were sufficiently high to take care of the additional cost of mountain operation¹⁰. Enlarging on the point Mr. McGeer said that the railways were compelled to carry on with low rates in eastern Canada, even if they had to make proportionately higher rates in the west, so that the rates in the prairies are much higher than they would have been had they been established on a basis of operating costs. Considering operating costs per ton mile, per mile of line, per gross ton mile, or per car mile, the prairie provinces with their long mileage and with their very large tonnage of a similar nature enjoyed more favourable conditions than the extremities of the Dominions, he maintained.

Numerous alleged disparities against British Columbia were cited, but the chief arguments against the restoration of the Crowsnest agreement were :

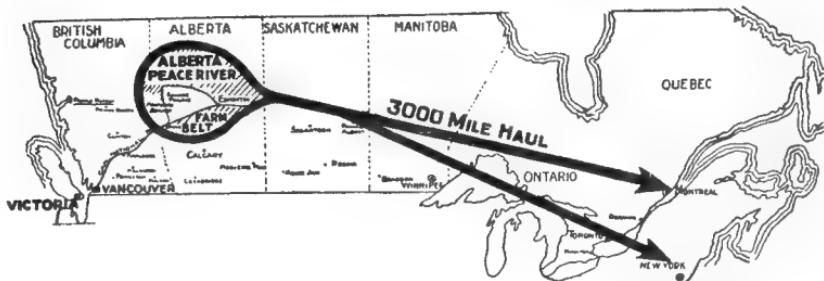
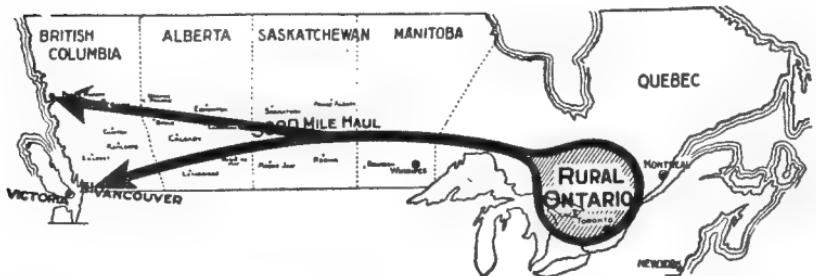
1. Grain and flour from Alberta and parts of Saskatchewan would be forced to use an illogical long haul to the Atlantic seaboard, due to discrimination against British Columbia.

2. To other products Vancouver as a port of entry was closed, since the rates favoured the long haul from the Atlantic coast eastward.

3. British Columbia was entitled to "equal" rates under the terms of the Union.

The 1922 decision, unsatisfactory to the British Columbia interests gave rise to an appeal to the Board of Railway Commissioners in the following year. This appeal as already

CANADA'S CONTRIBUTION



Equalized Freight Rates -- the Key to Prosperity

described led to a ten per cent. reduction in the mountain area. Finally, in 1925, the rates were equalized¹¹. As a result, the port of Vancouver as an export point for Canadian grain now possesses, ostensibly, the same advantages as Montreal. The equalizing of rates to Vancouver does not settle the question finally, however, since there are other factors in the development of grain movement via the Pacific, namely, available ocean tonnage, ocean rates, and the Oriental market¹². The fact that none of these three factors is at present favourable was used by the railways as an additional argument against equalization of

mountain rates. The facts are true, but the conclusion does not appear to be sound, since the amount of grain shipped to the Pacific is dependent not only upon a satisfactory railway rate but also upon the facilities for shipment. In other words, until Vancouver can prove that it is capable of handling the grain shipment, no amount of rate reducing will cause the grain to move to the Pacific port¹⁴.

The accompanying chart, published by the Government of British Columbia, gives an excellent idea of the general line of economic argument adopted by that province for equalized rates. Their whole argument may be summarized as a protest against what they described as the needless long haul to the Atlantic seaboard. The counter-arguments of the railways are based entirely on geographic conditions previously described.

(3) *The Port of Montreal and the City of Winnipeg*

The action of Chief Commissioner McKeown and Commissioner Oliver in 1925, setting up equalized rates into and through British Columbia gave rise to considerable protest from the cities of Montreal and Winnipeg. The latter city maintained that its position as a grain distributing centre would be seriously disturbed if the Crowsnest scale were made applicable to the Pacific Coast. The mere application of the Crowsnest rate could not bring this about, but if Vancouver were to develop into a large grain port, a certain amount of business undoubtedly would be taken away from Winnipeg. The terms of the Crowsnest Act, however, were never meant to confer any special benefit upon the city of Winnipeg. The rate reductions were designed to be of assistance to the farming population, and, as previously suggested, Vancouver's comparative obscurity in 1897 prevented its inclusion in the terms of the agreement.

A considerable portion of Winnipeg's grain business is the result of the construction of Canadian railway rates. These were many times altered between 1897 and 1925, but only in the latter year was the principle upon which they were based disturbed. It was of this disturbance that Winnipeg complained. It is difficult to see, however, that that city had any just economic grounds for complaint, since, other things being equal, the scale of rates which benefitted the Atlantic seaboard gave them considerable business to the detriment of one or more cities on the Pacific Coast. Undoubtedly the adoption of the "equalized" rate scale will ultimately give rise to a slight disturbance of economic conditions at Winnipeg. This should only be temporary, however. Ultimately a better distribution of the grain business should result.

The position of Montreal is somewhat analogous to that of Winnipeg. Rates had long favoured that city, and a considerable business dependent almost entirely upon those rates had sprung up. When the rates on grain and flour to Vancouver were reduced to the Crowsnest scale it appeared that considerable traffic would be diverted from Montreal, and consequently many protests against the new rates were circulated from Montreal.

There were two apparently vulnerable points in the 1925 decision of the Board, and both of these were attacked. In the first place, the decision was rendered on the eve of the dissolution of Parliament, and in the second, the order was signed by only two members of the Board, the remainder of the Commission holding that consideration of the question be deferred for the general rate inquiry. Those who were opposed to the decision held that it was a political move designed to secure votes for the Liberal party in the Province of British Columbia. The fact that the decision was rendered by only two members of the Board led the Montreal Corn Exchange, in a letter to the Board of Railway Commissioners, to describe the whole procedure as "high handed".

J. K. Smith, Manager of the Board of Trade Transportation Bureau for Montreal, claimed that if the order were allowed to go into effect, discrimination would be created against grain moving eastward from Fort William and Port Arthur¹⁵. What was happening was that the same group of organizations that violently protested against the restoration of the Crowsnest Pass agreement in any form in 1922, were now demanding its rigid and literal application, and were protesting against the extension of the principle of the agreement to cover the whole Dominion.

If the reduced rates to Vancouver do what they are supposed to, and that port becomes a large shipping point for grain, Montreal will undoubtedly be affected, but whether the disturbance caused could be called "discrimination" is another matter.

The complaints briefly described above are directly attributable to the restoration in 1922 of the Crowsnest rate on grain. Those issuing from the Maritimes and British Columbia were the direct result of the 1922 legislation and the arguments presented by Winnipeg and Montreal were the result of a decision which extended the scope of the Crowsnest scale. In practice, the result of the litigation of 1922-27 has been to make the statutory rate on grain universal throughout the Dominion, but there remains the fact that grain rates are protected by Parliament only over a certain area, and in the event of a national crisis, disturbances in rate-structure are likely to occur, since the rates are in part so protected, and in part dependent only upon a decision of the Railway Commission.

It remains now to examine the merits of the arguments of the contesting parties presented to the Special Committee in 1922, particularly those of the prairie provinces and the railways.

The Prairie Provinces and the Crowsnest Rate Scale

The case for the retention of the Crowsnest rate scale as presented by the Prairie Provinces has been summarized as follows¹⁶:

(1) Canada made a contract with the Canadian Pacific Railway and paid the consideration in full and the benefits which accrue to Canada cannot with propriety be taken away.

(2) The East has maximum protection from water competition and American rail competition. The West has no maximum protection except that which was bought and paid for under statutory agreement.

(3) The maximum protection to the east is a continuing one. The maximum protection to the west is only effective when rates are higher than the traffic can possibly bear.

(4) Grain rates under the Crowsnest Pass agreement will pay reasonable profits to the railway and are considerably higher than grain rates in 1917 and for many years previous.

(5) Disparity in favour of the west will not be created, but some of the disparity against the west will be relieved.

(6) Eastern rates will automatically come down as the result of American reductions.

(7) The Crowsnest Pass rates will only be a protection until normal times return.

(8) Rates above the maximum have been tried with disastrous effects.

(9) Rates without traffic are useless.

(10) Grain rates have borne more than their fair share of railway financing.

(11) The abolition of the maximum provided by the agreement would completely change the whole theory and structure of the Railway Act, the policy of which was settled after careful preparatory study.

The contractual argument has been strongly urged upon three grounds, namely : That the Canadian Pacific Railway Company entered the bargain voluntarily; that they received actual value in the shape of large subsidies in exchange for which they agreed to establish rates that would benefit the entire Dominion; and finally, that they never complained against the terms of the agreement until they were enforced.

This argument, which is in many respects the strongest presented by the prairie provinces, especially from the point of view of law, is not without its vulnerable points. It must be noted in the first place, that the Canadian National Railways,

none of the integral sections of which was a party to the agreement, have been forced to acquiesce in its provisions. In their case it was an involuntary arrangement, with no value received. Furthermore, a forced low rate in one part of the country is likely to lead to the imposition of higher rates in other parts; that is, instead of benefitting the Dominion as a whole, as the prairies suggest, the agreement is likely to discriminate against parts of the country.

An examination of the other arguments presented leads to their division into two categories; those demanding reduced rates generally, and those demanding the statutory rate, specifically. The desire to establish firmly the statutory rate seems closely akin to the medieval theory of *justum praetium*, in which economic circumstances were allowed to play no part.

The statement that the "east has maximum protection from water competition and American rail competition, and that the west has only statutory competition", is of greater interest. The statement is true, and a superficial examination gives little opportunity for refutation. Two important inferences are to be drawn from the argument, however. In the first place, the demand for statutory protection implies lack of faith in the Board of Railway Commissioners. In demanding by statute for the prairies what physical and political geography have given to the east, the fear is expressed that in computing rates, the railway may regard the geographic disadvantage (from the railway's point of view) of the east as a factor in rate-making as against the west.

The third argument, "that the protection accorded the west, unlike the 'continuing' one in the east, is only effective when rates are higher than the traffic can possibly bear", also leans for support on the long discarded theory of *justum praetium*. It attempts to fix for all time, and against all emergencies, the rates laid down in the Act of 1897 as all the traffic can bear. As against this, it may be argued that the statute can be suspended in case of extreme emergency, as was done in 1922. The necessity of having to go through this procedure not only causes undue delay, but at once causes the question to be asked : "Why have the statutory rate, if it is to be abrogated in cases of emergency ?"

The statement that the Crowsnest rates will only be a protection until normal times return, *i.e.*, during abnormal times, seems to be a better argument against the statutory rate than it does in favour of it. It tacitly admits that the agreement is to be used to deprive the railways of higher rates when circumstances make these necessary. Finally, it is stated that the removal of the Crowsnest rate scale would disrupt the entire rate structure of the country and be equivalent to a complete

disavowal of the spirit of the Railway Act. That part of the Railway Act concerned was presumably meant to establish rates which would be of benefit to the Dominion as a whole, not those which confer especial benefit upon one section of the community to the detriment of others.

The remaining arguments do not touch upon the Crowsnest Pass agreement directly. They are mainly requests for lower rates, and as such need not be considered here.

The arguments offered by the railways against the reinstatement of the Crowsnest Pass agreement was principally one of greatly increased costs, as described in a previous chapter. Objections were raised from other parts of the Dominion on the ground that they would be deprived of reductions to which they were entitled, by the application of the Crowsnest scale.

The report of the Committee on Transportation Costs¹⁷ is in many respects a curious document. It carries the argument to a point of condemning the principle of fixing rates by legislation and declaring that the question of rates seems to be one that can best be treated by the Board of Railway Commissioners. At that point, however, it takes into consideration the fact that the prairie provinces are devoted to the basic industry of grain growing, and that the prosperity of that industry is a factor affecting the economic welfare of the nation at large. From these premises it reached the conclusion that an immediate reduction in rates on grain and flour was in the national interest and that the reduction should be obtained by the revival of the rates determined for those commodities by the Crowsnest Pass agreement. It held that the Committee avoid the appearance of invading the jurisdiction of the Board of Railway Commissioners.

The prairie provinces have always stressed the necessity of giving to Canada's primary industry, grain growing, railway rates that will enable the farmers to enter into competitive markets. They have, however, done more than that. In declaring point-blank that they have no confidence in decisions handed down by the Board of Railway Commissioners, and in demanding a statutory rate established thirty years ago, they are directly demanding, either (1) that grain shipments for export be subsidized, or (2) that other products bear part of the rate that should fall upon grain and flour. In whatever way the discrepancy may be made up, it means that someone other than the shipper or consignee of grain is paying to the railways the difference between the statutory rate on grain and a rate that would be fixed by the Board of Railway Commissioners if they had free play in the matter of grain and flour rates.

There is another economic possibility arising out of the application of statutory rates on grain and flour. It has been suggested above that the difference between the statutory rate,

and what the Railway Board would consider a fair rate is shifted on to other commodities. This is what the railways would naturally try to do, but for several reasons they cannot achieve their object and have to bear part, at any rate, of the loss themselves.

Figures for the first nine months of 1927 indicate that in that year, conditions outlined above were taking place. Estimates indicate that the railways' payroll would probably be increased over 1926 by about \$9,000,000. At the same time, costs of several classes of materials are said to have advanced¹¹.

Regarding the Crowsnest Pass agreement as far as it affects the railways, the following opinion has been expressed :

"The Crowsnest Pass rates of thirty years ago, when "economic conditions were vitally different were restored. ". . . It is well to accentuate that fact, because it marks "the gravest feature of novelty and instability in the "transportation realm which has risen in a generation. "Its most serious aspect is the blow dealt at the integrity "of the Railway Commission. . . We must all recognize "the perilous nature of the situation which has thus been "created. What the carriers lost in 1927 by reason of this "adverse factor will not be known until the accounts have "been analyzed; but the figures cannot very well fall "below several millions." ¹²

¹¹ From evidence submitted to the Board of R. Com. at General Equalisation Case

¹² *Evid.*, Vol. 510, pp. 7822, 7823.

¹³ *Exhibit*. F. H. 221.

¹⁴ *Evid.*, Vol. 510, p. 7788.

¹⁵ *Exhibit* 4, General Rates Inquiry.

¹⁶ 17, *B.R.C.*, p. 164.

¹⁷ *Province of Nova Scotia : Submission of Claims to Royal Commission*, 1926, p. 182.

¹⁸ *Supra*, Chap. IV.

¹⁹ *Evid.*, Spec. Com., Vol. 14, p. 540.

²⁰ *Ibid.*, p. 542.

²¹ *Supra*, p. 38.

²² *Evid.*, rate inquiry, Vol. 498, p. 2881.

²³ In an interview at Vancouver on March 18th, 1927, James Richardson, one of British Columbia's largest grain exporters, said : "The movement of grain through this port is strictly an economic question. It depends on many other factors beside freight rates, preference not being considered in the situation."

²⁴ *The Gazette*, Sept. 8, 1925.

²⁵ H. J. Symington, representing the provinces of Manitoba, Saskatchewan and Alberta, evidence before Special Committee to consider Transportation Costs, 1922, at p. 327.

²⁶ The report, consisting of about three thousand words, reviews the history of the agreement as well as the evidence submitted.

²⁷ Estimates prepared by J. Lambert Payne, former controller of railway statistics, Ottawa. Mr. Payne was formerly private secretary to Hon. A. G. Blair, and, in 1897, took down the terms of the Crowsnest agreement from Mr. Blair's dictation.

²⁸ *Ibid.*

CHAPTER VI

FREIGHT-RATE STRUCTURE AND REGULATION¹

Theories of Freight Rates—Why and How Freight Rates are Controlled—
The Interstate Commerce Commission

Theories of Freight Rates

There is no need here for a detailed discussion of the theory and practice of freight rates, but it is necessary, none the less, to set out in brief some of the pertinent factors in the construction of these rates.

Economically the carrying of freight should be regarded as any other commodity offered for sale on the open market, as labour, land, or foodstuffs. There are no inherent economic differences between the price charged by a railway company for hauling a bushel of potatoes a distance of one hundred miles and the price charged by a bricklayer for carrying a load of bricks up a step-ladder for eight hours a day. There are, however, differences which while not being inherent, are of sufficient importance to warrant a somewhat different approach to the examination of the theories of freight-rate structure. In the first place, railways form what is generally called a "public utility," and in the second, railways often enjoy a monopoly control over certain territory.

Even so, it is difficult to understand why the "cost" theory, long discarded in the case of most commodities, should still be considered by many writers as the basis of freight-rates. Railway costs are generally divided into two classes : (a) constant, (b) variable. The first class, which includes interest on floating and funded debt, capital obligations on leased lines, taxes, etc., forms a relatively large part of the total annual expenditure of a railway. The second class includes what are generally spoken of as "operating expenses," these in turn being subdivided into :

- (1) Maintenance of way and structures.
- (2) Maintenance of equipment.
- (3) Conducting, transportation.
- (4) General expenses.

Analysis of this list of expenses reveals the fact that the items listed as (1) (2) and (4) must be paid whether ten or one hundred trains run over the company's lines, so that, although

greatly variable from year to year as to amount, due to the variations in number of trains run, their presence is constant as long as the railway continues as a going concern.

From the above it is obvious that if the actual physical cost of hauling *A* from *X* to *Y* is ten dollars, and the variable costs in connection with the movement amount of five dollars, the railway will try to obtain more than fifteen dollars for hauling *A* over the stipulated distance. However, if they are unable to secure a sum over fifteen dollars they will accept a lesser sum, provided it be over ten dollars, since any excess over that amount, while not entirely meeting the variable costs, will contribute toward them. As a direct factor, costs do not, therefore, enter directly into rate-making, except in so far as they set the limit below which it is physically impossible for the railway to haul the load in question.

The converse theory is that of charging "what the traffic will bear". This phrase has often been misunderstood to mean extortion on the part of the railways, the shippers or consignees being the victims. Such, however, is far from being the case. The slogan carries no implication of "bleeding" on the part of the railways. It means nothing more nor less than charging the price that shippers can reasonably be expected to pay for the service rendered. It is, in fact, practically analogous to the "point of maximum net return" theory in the question of monopoly prices. This is especially true, not only because most railways enjoy a monopoly over specified territory, but also because where actual monopoly is lacking, a working agreement as regards rates is usually arrived at between competing railways.

Why and How Freight Rates Are Controlled

In view of what has been said above, namely, that the rates charged by railway companies are to a great extent fixed by those who pay them as well as by the railways, the question naturally arises : "Why then is governmental control of these rates necessary?" The answer to this question is largely contained in the statement that the problem of railway rates is even more one of adjusting the conflicting interests of different sections of the country, e.g., rival producing centres, markets, and distributing points than it is one of adjustment between the railways and the public generally.

Rate-problems that have arisen from time to time in the Dominion of Canada amply bear this statement out. This, however, is not the only reason why control is necessary. It has already been suggested that the monopoly character of railways plays an important part in the determination of "what the traffic will bear". Occasions upon which the "saturation

point" may work undue hardship upon one industry or on a specified district of the country are not beyond conception.

A good number of European countries, including England, formerly had a large apparatus of statutory rates by which they sought to obliterate discrepancies, and further what they believed to be to the best interests of their country. The incompatibility of statutory rates with changing circumstances led to their abandonment, and, following this, final and direct control was placed in the hands of the sovereign legislative body. This was done by constituting the "parliament" in each case as a Board of rate arbitration *ad hoc*. Such, for example, is the case in France today. Most countries, however, have gone a step further, and have established under various names and with slightly varying powers, a permanent, non-political body, whose sole or principal duty is the investigation of problems of transportation. An outstanding example of the "Commission" system, and one that is of some importance here, is the Interstate Commerce Commission of the United States.

The Interstate Commerce Commission

An examination of the reports of the Interstate Commerce Commission reveals no situation analogous in any way to the one presently under discussion. The history of grain and flour rates in the United States does not include any mention of statutory rates and their attendant problems. The difficulties in the United States appear to have been mainly questions of personal, regional, and commodity discrimination, with the first-named predominating in the earlier days.

There is also no indication of any case dealing specifically with the question of "equalized" rates from the grain-producing areas to the Pacific Coast as compared with those from the same areas, to the Atlantic seaboard.

Lacking an analogous situation, it is impossible to draw a direct comparison between grain-shipping conditions in Canada and in the United States, but something of value can be learned, however, from an examination of the underlying principles of rate determination as applied by the Commission.

In computing rates, the Interstate Commerce Commission appears to lay particular stress upon differences and similarities of operating conditions. They have held that in the absence of evidence showing similarity of transportation conditions, relative rate comparisons are of little value in determining reasonableness of rates². Rates between two localities are not comparable with rates between two different localities merely because the traffic density of one destination locality is substantially the same as the other. The relative traffic density of the two localities of origin and of intermediate territories must

also be considered³. The Commission has also maintained that comparisons based upon distance alone have little probative value in measuring the unreasonableness of rates⁴. Further, comparisons based merely upon differences in distance do not constitute justification for a finding either of unreasonableness or of undue prejudice⁵.

The principles outlined above were more or less those advanced by the Canadian Pacific Railway Company against the extension of the Crowsnest grain scale westbound to Vancouver. These principles lean for support to a considerable extent on the cost theory, which, according to the latest decisions of the Board of Railway Commissioners, seems destined to abandonment.

The use of "sub-normal" rates as a basis for comparison is also discussed by the Commission. In the spring of 1916 the Commission determined that rate comparisons cannot be regarded as controlling where rates alleged to be unreasonable were made effective with little or no regard to the question of whether they yielded adequate compensation⁶.

This principle is one that until the decision in the matter of west-bound grain rates, pronounced by Chief Commissioner McKeown of the Railway Board in 1925, was the basis of reasoning applied by that Board in discussion of any questions relating to the extension of the terms of the Crowsnest Agreement. The McKeown decision, however, definitely reversed this principle, and its reversal was reaffirmed in the General Rates Inquiry recently concluded.

The suggestion has always been thrown out by the Canadian Pacific Railway that grain rates are somewhat higher in western United States than in the Canadian West. As in western Canada, wheat is the chief cash crop of the farmer of the north-western states, with which the comparison is constantly being made. The comparison, however, is not very fortunate.

Throughout those regions of the United States devoted principally to grain-growing, a serious state of agricultural depression is said to prevail at the present time. The Fordney Tariff, actually in force, and the McNary-Haugen Farm Relief Bill which passed both Houses at Washington and was only prevented from becoming law by the president's veto, are national admissions of the widespread character and seriousness of these depressions. Arising out of these difficulties, an active campaign to curtail production has been inaugurated. The prevailing conditions have also been reflected in the decreased railway returns from these districts.

The general difference in the grain-rate situation in the two countries since the War is that in Canada there has been a definite maximum, originally fixed by Canada and since reaffirmed, and

which fixed in advance for the wheat-producer the maximum cost of the rail movement of his crop.

In the United States, the Interstate Commerce Commission is permitted by legislation to allow the railways to charge such rates as will enable them to earn from $5\frac{1}{2}$ per cent. to 6 per cent. on their capital investment, measured by reproduction costs. Grain traffic has, according to some, borne more than its just share of the burden of producing this revenue⁷. There have been no statutory rates to upset the equanimity of the Commission, and in cases where, for one reason or another, rates have been especially reduced, the railways have been forbidden to recoup themselves by raising rates in another area or upon other commodities.

There is perhaps only one lesson that can be learned from this brief examination of conditions in the United States, and that is, the value and importance of freedom from restrictions enjoyed by the Interstate Commerce Commission due to the absence of statutory rates.

¹ *Railroads, Rates and Regulation*, W. Z. Ripley; *Railway Control by Commission*, Frank Hendrick; *Elements of Railway Economics*, W. M. Acworth.

² 88 *I.C.C.*, 593 at p. 596.

³ 46 *I.C.C.*, 1, at p. 9.

⁴ 93 *I.C.C.*, 593.

⁵ 112 *I.C.C.*, 121-123.

⁶ 89, *I.C.C.*, 353 at p. 358.

⁷ Oliver, C., 17, *B.R.C.*, 192 at p. 259.

CHAPTER VII

CONCLUSIONS

The Fallacy of Statutory Rates—The Integrity of the Board of Railway Commissioners—The Railway and the Farmer

The Fallacy of Statutory Rates

Laying aside reasons of sentiment, which disguised as a demand for statutory justice, are the only claims advanced by the grain-growing west for the retention of the Crowsnest scale, there seems no sound reason why those rates should be maintained as such. The fallacy of the statutory rate, which conveys the idea of permanency is obvious when one stops to consider that it is impossible to forecast conditions many years ahead even with the complicated paraphernalia now at the disposal of many who purport to do so. The history of the Crowsnest Pass Agreement has demonstrated conclusively that a rate made under certain conditions and found adequate thereunder may before many years prove hopelessly inadequate for the needs of the railways.

This leaves the way open for another important problem, namely, that of the railway's income and return on investment. Whether a railway is publicly or privately owned, it must earn a sum sufficient to enable it to give satisfactory service to the country at large. If a publicly owned railway finds itself without sufficient income due to the imposition upon it of an onerous statutory rate, the taxpayers must meet the deficits. They will, in practice, be paying part of the rate that should have been borne by one class of shippers or consignees. In the case of a privately owned railway, diminution in income, by whatever reason caused, must give rise to an impoverished service. Since shareholders in a privately owned railway are generally considered to be entitled to a fair return on their investment, the reduction of service is likely to take place as soon as the investors' return is threatened. Efficient railway service is necessary to any community, and a particular group, which by the imposition of an onerous freight-rate impair or undermine the efficiency of railway service, may ultimately find that they have done themselves more harm than good.

Another unsatisfactory possibility arising out of the imposition upon the railways of a sub-normal rate on specific commodities or through designated areas is that the railways will

immediately seek to recoup themselves at the expense of another commodity or another area. This attempt meets as often with failure as with success. If failure attends the railways' efforts, they recoup themselves at the expense of the taxpayer or of diminished service, as the case may be.

It does not require a very close examination of the circumstances to reveal the fact that it is as ridiculous to attempt to fix for a permanence the price of hauling wheat or any other commodity as it is to attempt to fix the price of the commodity itself.

The Integrity of the Board of Railway Commissioners

In a previous chapter, the statute creating the Board of Railway Commissioners has been outlined and its provisions discussed. From the outset, it is obvious that it was the intention of the Dominion Government to create a non-political body having complete governance, *inter alia* over freight-rate structure within Canada. Following the suggestion made in 1902 by Professor S. J. McLean¹, then of the University of Toronto, and now Assistant Chief Commissioner of the Board, the Commission consists of men, some of whom are trained in the law and some in railway practice. A decision of the Board may be appealed to the Supreme Court only on questions of law; on questions of fact and policy the Commission is a court of final jurisdiction. The tenure of office of commissioner is for "life and good conduct" and salaries commensurate with the importance of the positions are paid. In fact, everything possible has been done to ensure the integrity of the Board, and to enable it to command the respect of all sections of the country. It is, of course, subsidiary to Parliament, the body which created it. In its treatment of the Railway Board, Parliament has always tried to be as fair as a political body can, but it has, willingly or not, often dealt blows at the integrity of the Commission, destroying thereby some of the respect which it sought to set up.

For example, in 1922, as already described, for purely political reasons, it undertook a rate enquiry within the scope of the Commission. For similar reasons, it has to this day refused to abrogate a thirty-year-old statutory freight rate, thereby circumscribing the jurisdiction of the Board of Railway Commissioners. The work of establishing, maintaining and equitably supervising freight rates is one of greatest importance to the country. Its work must be as free from political influence, direct or indirect, as must that of an ordinary court of justice. That is the only way to ensure for the Commission the respect of the entire country.

During the past few years, members of Parliament and other public persons representing the views of the western farming

community have hinted that the Commission has upon several occasions acted in a way detrimental to their interests. This feeling was undoubtedly caused by the fact that the Board of Railway Commissioners have more than once openly deplored the fact they were hampered in their decisions by the Crowsnest Pass Agreement. A closer examination of the Board's judgments however, reveals the fact that the Commissioners, since the very time their office has been created, have devoted a great deal of their time and energy to minimizing and removing the rate discrepancies against the west. They have succeeded in bringing western rates very close to those enjoyed by the eastern section of the country. The differences presently remaining are solely the result of the water competition in the east. Eastern rates certainly are "compelled rates" and the Board's control over them is consequently not as great as in places where such competition does not exist.

The Board's objections to the Crowsnest Pass Agreement have never been specifically directed against the rates created by that agreement; the objection has been to the fact that the rates are statutory, and hence circumscribe the work of the Board.

The direct charge of political influence has only been brought against the Board openly upon one occasion, and that by *The Gazette* (Montreal) in 1925, when Chief Commissioner McKeown announced that grain rates to Pacific ports were to be based, mile for mile, upon those then in force to the Atlantic seaboard. But time has proved this charge groundless. At the general freight rate inquiry recently completed, the Board refused to rescind the decision arrived at by a minority of their number. Vancouver is growing in importance as a wheat exporting port, and the farmers of Alberta and Western Saskatchewan are benefitting directly by being enabled to export at smaller cost.

But if the community at large is to have full confidence in the Board of Railway Commissioners, not only in questions of minor importance, but also when major problems, affecting the whole country, are being considered, Parliament itself must lead the way in establishing that confidence. There must be a tacit understanding that there shall be no interference by Parliament in the findings of the Railway Commission, any more than there is at present in the decisions of the Supreme Court. Appeals from the decisions of the Railway Board to the Governor-General-in-Council should be turned back to the Commission itself for consideration, except when a purely legal question is involved, in which case reference should be had to the Supreme Court.

The Railway and the Farmer

The Canadian farmer is finding the problem of marketing his wheat at a satisfactory price growing annually. The

advantages gained from the co-operative marketing movement have been almost counterbalanced by the growth of competing producing areas. The European wheat market seems to be gradually decreasing its demand for the Canadian product. The decline has not been very noticeable as yet, but the time does not seem far off when the Canadian wheat producer will have to make his prices particularly attractive in order to retain a satisfactory share of the European market. Moreover, since the time wheat-growing has been carried on on a large scale, there has been fixed in the farmer's mind the firm conviction that the movements of the "east" are motivated against him. To some extent this is true. In the question of freight rates alone, the petty sectional jealousies are constantly manifesting themselves.

Under the circumstances, it is perhaps not so surprising that these farmers and their representatives should cling desperately to a thirty-year-old statute, and seek to extend the meaning of this favourable legislation whenever the opportunity presents itself.

The question is a large one. Grain, and its products, are Canada's greatest exports; they are likewise the greatest revenue producers for Canadian railways. This last point was clearly established at the hearing before the Railway Commission in the General Equalization Case¹.

Another question of primary importance is whether or not the present grain rates are profitable to the railways. Reference to the official traffic figures submitted by the railways themselves to the Railway Board establish the fact that not only are the net earnings per mile of line higher in the western grain traffic region than in the region east of the Great Lakes, but also that it is during the months of heaviest grain movement that the net returns are highest. This applies to both railway systems. It has also been shown that the net returns are higher in the years of larger crops. It is difficult, in the face of these facts, to account for the railways' contentions that grain rates are in and of themselves unduly low.

It should be remembered that in 1925, the Railway Act was amended so as to permit the railways to increase their tolls on certain commodities upon which the Crowsnest Act placed certain maxima. It is suggested by Commissioner Oliver² that this was done to recompense the railways for any loss they might temporarily suffer as a result of the reversion to the Crowsnest grain scale. He suggests further that that was the express purpose of Parliament. Such may have been in part the case, but a more likely reason for Parliament's action was that it desired to rid the country once and for all of the disorder and

chaos to which the Supreme Court's definition of the terms of the Crowsnest Act gave rise⁴.

The railways, however, have been constantly maintaining that revenue upon grain carried since the re-adoption of the Crowsnest scale is inadequate. With the further reductions, demanded by the latest decision of the Board of Railway Commissioners⁵, they claim that their financial outlook is in a very sorry state. With a falling revenue, the estimated situation to be faced by the Canadian Pacific Railway Company as from the end of 1926 is as follows :

Surplus—1926.....	\$7,462,825
Deduct wage increase—annual—arranged since 1926, and not otherwise provided for.....	5,000,000
Deduct C.P.R. estimate of increase in fixed charges, over 1926.....	750,000
Deduct estimate of loss in revenue of branch line grain rates reduced to main line basis, eastbound, based on year 1926.....	949,573
Loss in revenue (est.) resulting from westbound export grain rates to Pacific being reduced to C.P.R. main line basis to Fort William, based on 1926.....	521,849
Loss (est.) if mountain differential removed (Stephens' evidence).....	1,000,000
Est. loss consequent upon rates on grain Fort William to Quebec, St. John and Halifax being reduced as suggested and Company were required to meet reduction of 1 cent only in Buffalo-New York rate.....	700,000
Total loss of revenue (annual est.)....	\$8,921,422
Deficit of shortage in amount required to pay fixed charges and dividends—annual.....	1,458,597
	<hr/>
	\$8,921,422 \$8,921,422 *

This estimate, fortunately, is of the type that never turns out as badly as it is painted. The adjustment from one scale of rates to a lower one will undoubtedly affect the railways adversely

for some time; if the period of adversity shows signs of becoming permanent, the railways always have the right to appeal to the Commission, who in turn are bound to see that the carriers receive fair return for their services.

If the evidence, as adduced by Commissioner Oliver, be correct, then the Crowsnest scale on grain is an adequate one for the railways at the present time, but that does not prove that the Crowsnest scale will be adequate for tomorrow, nor does it prove that it is necessary to retain the Crowsnest scale by statute.

If the Crowsnest scale is inadequate for the railways, and such scale as they consider adequate be onerous to the wheat-farmer, the remedy should come from a source that can lay more claim to economic soundness than can statutory freight rates. The statutory rates on grain as provided by the Act of 1897, as previously suggested⁷, played only a secondary part in the formulating and passing of the Crowsnest Act. But whatever part they played, they were inserted into the Act to encourage the development of grain growing on the prairies as a means to a national prosperity. They are said to have achieved the desired result, but it is doubtful if the success of the west has depended in any way upon the Crowsnest maxima, since they were not called into force, let alone exceeded, until the period of post-war depression.

If a reasonable rate for hauling wheat, as determined by the Board of Railway Commissioners, is so high as to place difficulties in the way of marketing the product, a straightforward solution must be found to remedy the situation.

Wheat-growing is no longer an infant industry in Canada; it should be able to stand on its own feet. Subsidies should be unnecessary, but, if for political reasons Parliament is unfortunately forced to grant them, it would be more satisfactory to everyone concerned if they were administered as direct aids instead of through the devious and costly channel of a statutory rate.

In the United States, it has been suggested that curtailed production might solve the producers' difficulty. Curtailed production will mean curtailed traffic for the railways, and if increase in tonnage and consequent density of traffic mean to the railways what they constantly claim them to mean, then the quickest and easiest way for the carriers to recover the lost traffic would be by a reduction of rates. But this solution of the problem omits consideration of the fact that competition is daily growing keener in the European markets. Restriction of output by the United States and Canada will not find sympathy in Europe. On the contrary, it is likely to cause European producers to supply a greater part of their own demand and thus work permanent injury to the Canadian farmer.

Restriction of a different nature might, however, be of considerable assistance to the farmer. It has been the policy of influential Canadians during the past few years to advocate a strong policy of immigration, particularly to the farming lands. If such a policy be carried out, the difficulties of the farmers will be increased. It will be necessary for them to produce wheat at an even lower price than at present, and that will only serve to widen the rift between wheat-producer and railway. It would be unnecessary to adopt the quota-system at present in force in the United States. The issuance of a few simple truths regarding the exact state of affairs in Western Canada would tend to restrict the flow of immigrants.

The outlook, however, is not as pessimistic as it seems. From the figures presented to the Railway Board, it seems that the Crowsnest scale, or a scale little in advance of it, would yield adequate return to the railways. Added to this is the recent removal of the Mountain Differential, which will enable grain from western Saskatchewan and from Alberta to reach its export point at greatly reduced costs. The completion of the Hudson Bay Railway will make another export point available, and this time it will be eastern Saskatchewan and Manitoba that will receive the benefit. When these factors are considered in their proper light, and when due weight is attached to their importance, it will become obvious to the west that a statutory rate as such will no longer be capable of being construed as a Magna Carta.

The position of the railways has been well summarized by Chief Commissioner McKeown. In a speech at Regina on November 19, 1924, the head of the Board of Railway Commissioners explained one of the fundamental principles of rate making in the following language :

"In the first place there is this phase of our national life, "in connection with the commercial transportation interests "which must be ever borne in mind, and which I preface "with this remark, with which I think we will all agree: I "have never yet been where the most violent attacker of our "transportation systems has taken the ground that these "systems should not be allowed to have rates sufficient to "reimburse them for their running expenses and a fair "return for the money invested.

"We must remember, gentlemen, that there must be "levied upon the traffic of the country, the passenger and "freight traffic of the country, a sum sufficient to pay for "the service which is being rendered, to pay a fair return "upon the money which has been invested in them, both "by those who may hold stock in the privately owned

"company, and the rest of us who are all stockholders in
"the great Canadian National Railways."

The grain-grower of the west is likewise entitled to justice
and equitable treatment. But no treatment is just and equitable
that works or is capable of working hardship on another.

¹ Published in the *Sessional Papers*, 1902.

² 17, *B.R.C.*, 182, at p. 248.

³ *Ibid.*

⁴ *Supra*, Chap. III.

⁵ 17, *B.R.C.*, 182 at pp. 294-295, *Supra*, Chap. IV.

⁶ 17, *B.R.C.*, p. 228.

⁷ *Supra*, Chap. I.

APPENDIX

The Crowsnest Act, 60 & 61 Victoria, c. 5, reads as follows :

An Act to authorize a subsidy for a railway through the Crows-nest Pass.

(Assented to 29th June, 1897)

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

Subsidy to the Canadian Pacific Railway Co. for railway through Crow's Nest Pass. —
Agreement to be entered into.

1. Subject to the conditions hereinafter mentioned, the Governor-in-Council may grant to the Canadian Pacific Railway Company a subsidy towards the construction of a railway from Lethbridge, in the district of Alberta, through the Crow's Nest Pass to Nelson, in the Province of British Columbia (which railway is hereinafter called "the Crow's Nest Line") to the extent of eleven thousand dollars per mile thereof and not exceeding the whole sum of three million six hundred and thirty thousand dollars, payable by installments on the completion of each of the several sections of the said railway of the length respectively of not less than ten miles, and the remainder on the completion of the whole of the said railway; provided that an agreement between the government and the company is first entered into in such form as the Governor-in-Council thinks fit, containing covenants to the following effect, that is to say :

On the part of the Company :—

(a) That the Company will construct or cause to be constructed, the said railway upon such route and according to such descriptions and within such time or times as are provided for in the said agreement, and, when completed, will operate the said railway forever :—

(b) That the said line of railway shall be constructed through the town of Macleod, and a station shall be established therein, unless the Governor-in-Council is satisfied by the Company that there is good cause for constructing the railway outside the limits of the said town, in which case the said line of railway shall be located and a station established at a distance not greater than five hundred yards from the limits of the said town;

(c) That as soon as the said railway is open for traffic to Kootenay Lake, the local rates and tolls on the railway and on any other railway used in connection therewith and now or hereafter owned or leased by or operated on account of the Company south of the Company's main line in British Columbia, as well as the rates and tolls between any point on any such line or lines of the railway and any point on the main line of the Company throughout Canada, or any other railway owned or leased by or operated on account of the Company including its lines of steamers in British Columbia, shall be first approved by the Governor-in-Council or by a Railway Commission, if and when such commission is established by law, and shall at all times thereafter and from time to time be subject to revision and control in the manner aforesaid;

(d) That a reduction shall be made in the general rates and tolls of the Company as now charged, or as contained in its present freight tariff, whichever rates are now the lowest, for carloads or otherwise, upon the classes of merchandise hereinafter mentioned, westbound, from and including Fort William and all points east of Fort William on the Company's railway to all points west of Fort William on the Company's main line, or on any line of railway throughout Canada owned or leased by or operated on account of the Company, whether the shipment is by all rail line or by lake and rail, such reduction to be to the extent of the following percentages respectively, namely :—

Upon all green and fresh fruits, $33\frac{1}{3}$ per cent.;

Coal oil, 20 per cent.;

Cordage and binder twine, 10 per cent.;

Agricultural implements of all kinds, set up or in parts, 10 per cent.;

Iron, including bar, band, Canada plates, galvanized, sheet, pipe, pipe fittings, nails, spikes and horse shoes, 10 per cent.;

All kinds of wire, 10 per cent.;

Window glass, 10 per cent.;

Paper for building and roofing purposes, 10 per cent.;

Roofing felt, box and packing, 10 per cent.;

Paints of all kinds and oils, 10 per cent.;

Live stock, 10 per cent.;

Woodenware, 10 per cent.;

Household furniture, 10 per cent.;

And that no higher rates than such reduced rates or tolls shall be hereafter charged by the Company upon any such merchandise carried by the Company between the points aforesaid; such reductions to take effect on or before the first of February, one thousand eight hundred and ninety-eight.

(e) That there shall be a reduction in the Company's present rates and tolls on grain and flour from all points on its main line,

branches or connections, west of Fort William to Fort William and Port Arthur and all points east, of three cents per one hundred pounds, to take effect in the following manner :—One and one-half cent per one hundred pounds on or before the first day of September, one thousand eight hundred and ninety-eight, and an additional one and one-half cent per hundred pounds on or before the first day of September, one thousand eight hundred and ninety-nine; and that no higher rates than such reduced rates or tolls shall be charged after the dates mentioned on such merchandise from the points aforesaid;

(f) That the Railway Committee of the Privy Council may grant running powers over the said line of railway and all its branches and connections, or any portions thereof, and all lines of railway now or hereafter owned or leased by or operated on account of the Company in British Columbia south of the Company's main line of railway, and the necessary use of its tracks, stations and station grounds, to any other railway company applying for such grant upon such terms as such Committee may fix and determine, and according to the provisions of *The Railway Act* and of such other general Acts relating to railways as are from time to time passed by parliament; but nothing herein shall be held to imply that such running powers might not be granted without the special provision herein contained;

(g) That the said railway, when constructed, together with that portion of the Company's railway from Dunmore to Lethbridge, and all lines of railway, branches, connections and extensions in British Columbia south of the main line of the Company in British Columbia shall be subject to the provisions of *The Railway Act*, and of such other general acts relating to railways as from time to time passed by Parliament;

(h) That if the Company or any other Company with whom it shall have any arrangement on the subject shall, by constructing the said railway or any part of it, as stipulated for in said agreement, become entitled to and shall get any land as a subsidy from the government of British Columbia, then such lands, excepting therefrom those which in the opinion of the Director of the Geological Survey of Canada (expressed in writing) are coal-bearing lands, shall be disposed of by the Company or by such other company to the public according to regulations and at prices not exceeding those prescribed from time to time by the Governor-in-Council, having regard to the then existing provincial regulations applicable thereto; the expression "lands" including all mineral and timber thereon which shall be disposed of as aforesaid, either with or without the land, as the Governor-in-Council may direct;

(i) That if the Company or any other company with whom it shall have any arrangement on the subject shall, by constructing the said railway or any part of it as stipulated for in the said agreement, become entitled to and shall get any lands as a subsidy from the Government of British Columbia which in the opinion of the Director of the Geological Survey of Canada (expressed in writing) are coal-bearing lands, then the Company will cause to be conveyed to the Crown, in the interest of Canada, a portion thereof to the extent of fifty thousand acres, the same to be of equal value per acre as coal lands with the residue of such lands. The said fifty thousand acres to be selected by the Government in such fair and equitable manner as may be determined by the Governor-in-Council, and to be thereafter held or disposed or otherwise dealt with by the Government as it may think fit on such conditions, if any, as may be prescribed by the Governor-in-Council, for the purpose of securing a sufficient supply of coal to the public at reasonable prices, not exceeding two dollars per ton of two thousand pounds free on board cars at the mines.

And on the part of the Government, to pay the said subsidy by instalments as aforesaid.

Company to carry out
agreement. 2. The Company shall be bound to carry out in all respects the said agreement, and may do whatever is necessary for that purpose.

Issue of
Bonds. 3. In order to facilitate such financial arrangements as will enable the Company to complete the Railway as aforesaid without delay and to acquire and consolidate with it the railway from Dunmore to Lethbridge, hereinafter called "the Alberta Branch", which under the authority of Chapter Thirty-eight of the Statutes of 1893, it now operates as lessee, and is under covenant to purchase, the Company may issue bonds which will be a first lien and charge and be secured exclusively upon the said Alberta Branch and Crow's Nest line together in the same way and with the same effect as if both the said pieces of railway to be so consolidated were being built by the Company as one branch of its railway within the meaning of section 1 of chapter fifty-one of the Statutes of 1888, and that section shall apply accordingly, such first lien to be subject to the payment of the purchase money of the Alberta Branch, as provided for in the said covenant to purchase.

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